

Supreme Court, U.S.  
FILED  
DEC 08 2024  
OFFICE OF THE CLERK

No. 24A607

IN THE  
SUPREME COURT of THE UNITED STATES

ANTHONY WEIMER  
*Petitioner,*

STATE of MONTANA,  
*Respondant.*

*On Petition for A Writ of Certiorari to the  
Supreme Court of the State of Montana*

APPLICATION FOR BAIL PENDING WRIT OF CERTIORARI

*Addressed to  
Justice Elena Kagan*

ANTHONY WEIMER  
50 Crossroads Dr.  
Shelby, MT 59474  
Counsel, pro se

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Pursuant to Fed. R. S. Ct. Rule 23, Applicant, Anthony Weimer, requests this Court admit him to bail pending certiorari. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257 from the State of Montana's highest Courts dismissal of appeal on October 23<sup>rd</sup>, 2024. The relief sought is supported by the following and has been prepared in compliance with Fed. R. S. Ct. Rule 33-2. See index of Appendices listing appended orders from the lower Court denying bail.

## I. Background

I was charged with felony Criminal Mischief after removing a ten commandment monument off of Flathead County public property in June of 2020. I plead not guilty. Using as much care as possible, considering the circumstances, I backed up to the monument bearing the ten commandments, secured a chain around it, attached it to the vehicle, and towed it to in front of the Flathead County Justice Center. It was left partially in the median and traffic lane, unobstructing vehicle passage face down, later discovered to be damaged. Headed to the City of Kalispell police department to speak with the chief of police, I was stopped in front of the station by a police officer, arrested, and accused of Criminal mischief. Approximately 2-3 weeks prior, I was met with by two special agents of the federal Bureau of Investigation at my humble abode. The agents referred to a correspondence I had mailed to various government offices, including this Court. After plainly telling the agents I would enforce my constitutional rights. The agents agreed. Upon initial contact in jail with a Court appointed attorney, and asked why I removed the monument, I stated that it violates the First Amendment. During the action, I was also exercising my Second Amendment right to bear arms, with a pistol over my heart and a pistol on my hip. No altercations occurred with private or government persons leading up to and after the arrest.

## II. Procedural history

On July 6<sup>th</sup>, 2020, Anthony was released on his own recognizance. Following a bench trial on November 23<sup>rd</sup>, 2020, I appealed to the Montana Supreme Court while on probation for ~10 months on a 3 year deferred sentence. The Montana Supreme Court reversed and remanded for a new trial. I remained on my own recognizance. Prior to the new trial, I petitioned the Montana Supreme Court for writ of Supervisory Control. The Montana Supreme Court denied the petition stating that federal law is unavailing in state court. I then petitioned for rehearing, citing Art. VI, Cl. 2 of the United States Constitution. The Montana Supreme Court declined to issue the writ in the face of federal crimes, stating that I retained the remedy of appeal, forcing a trial on me. After a guilty verdict, I filed a motion to dismiss, citing federal Criminal Statutes the state would be committing and my right to protect myself and arrest the court and government employees. Based on this, but actually because I invoked my right not to participate in the Presentence investigation, the district court issued an arrest warrant at the request of the County attorney. My sentence was then made a 5 year commitment to the Department of Corrections. I motioned the court to stay execution of the judgement and was denied without prejudice, as a notice of appeal had not yet been filed. Upon contacting the State Appellate Defender Division, Appellate Chief, Chad Wright, said the states intimidation accusation was bogus, the judge wasn't allowed to do what she did, and that he would file a motion in the Montana Supreme Court and that I would be out of prison in about 30 days. After learning from him that I would most likely not be able to file my own opening brief, I proceeded pro se. On a renewed motion to stay, the district court denied the motion. Sitting in the prison reception unit, with no legal resources or funds. I requested appointment of counsel. Mr. Wright later filed a

Motion to Stay, and the Montana Supreme Court denied.

### III. Legal Standard

A single Justice is authorized to stay and grant bail. See, 28 U.S.C. § 2101(f). A circuit Justice has power to grant bail involving a state case brought to the United States Supreme Court by Certiorari. See, *Alchorcha v. California*, 86 S. Ct. 1359 (1966). To warrant stay of a judgement of a state's highest court, an applicant must demonstrate (1) a reasonable probability that the United States Supreme Court will grant Certiorari, (2) a fair prospect that the Supreme Court will reverse the decision below, and (3) a likelihood that irreparable harm will result from the denial of a stay. *Maryland v. King*, 567 U.S. 1301 (2012).

### IV. Discussion

a. Relief is unavailable from any other Court or Judge.

The Montana Supreme Court stated that federal law is unavailing in state court, re-laying that I would be punished on a preconceived outcome on appeal. After citing federal crimes for violation of federal constitutional rights by the state. Any judge in the state would seek to protect itself from being overpowered by inherent trait as hostile toward federal law, operating under a local spirit. The Montana State Appellate Defender Division neglected to show the reason for me invoking my right to protect myself from a tyrannical state. 18 U.S.C. §§ 241; 242; and 247 make it a federal offense to violate rights guaranteed in the Bill of Rights. The state of Montana, encompassing all officers of the Court, only sought to force acceptance of an affirmed conviction by way of an invisible deal based on Appellate Defender Chief, Chad Wright, saying the judgement would be stayed before I opted to proceed pro se. in order to file my own opening brief, which I drafted and was forced to file it as a response to an Anders brief later.

Relief sought through the federal district court would land squarely on delayed justice. The passing through unto the Circuit Court and then this Court is without doubt, as Mr. Wright put it, there is a need to create new precedent. See *Marbury v. Madison*, 5 U.S. 137.

b. Bail is justified in this matter and there is a reasonable probability that certiorari may be granted.

Noted above. There is no record evidencing Anthony as a dangerous person, having made any real and actual threats of violence, attempts of fleeing or escape, did not receive any additional penalty sentence, and I was on my own recognizance for two years, including serving 10 months on probation pending the first appeal without issue. The state of Montana inflicted punishment for my confrontation of their violation of my federal rights. The Criminal Mischief accusation and conviction is contrary to this Court's holding. The act was not done with an evil meaning mind and evil hand. See, *U.S. v. Baily*, 444 U.S. 394, 402, 100 S.Ct. 624, 62 L.Ed. 2d 575 (1980); (quoting, *Morissette v. U.S.*, 342 U.S. 246, 251, 72 S.Ct. 240, 96 L.Ed. 288 (1952)). Other than this Court's discretionary review. Justice Gorsuch's dissent in *Cunningham v. Florida*, 144 S.Ct. 1289, would be accurate. "For no less than this Court, the American people serve as guardians of our enduring constitution."

The ten commandments on government public property has been a conflicting issue from the time they were first placed by Catholics. It is an issue of public and national importance. In 2005, this Court produced conflicting decisions. *Van Orden v. Perry*,

545 U.S. 677 and *McCreary County v. ACLU*, 545 U.S. 844. But, Van Orden merely created a case by case precedent, and the lower courts refused to acknowledge. Federal courts, both district and circuit, have made conflicting decisions to make matters worse. Although, the Ninth Circuit in *Card v. City of Everett*, 520 F.3d 1009 and Tenth Circuit in *Green v. Haskell County Bd. of Comm'rs*, 568 F.3d 784, cert. denied 559 U.S. 970, are apparently conforming to this Courts 2005 decisions. Whether to apply the Lemon or Van Orden establishment clause test has plagued courts; the circumstances and physical setting of Flathead County's, among others in the State of Montana, e.g., Cities of Helena and Great Falls, do not comport to the First Amendment, the free exercise of religion, as I exercised, guaranteed in the Bill of Rights, through the Fourteenth Amendment.

This Court has reversed criminal convictions based on the First Amendment. See, *Texas v. Johnson*, 491 U.S. 397, regarding flag desecration; *Street v. New York*, 394 U.S. 576, regarding criminal mischief; *Pennsylvania v. Nelson*, 350 U.S. 497, regarding Communist party affiliation; and *Wisconsin v. Yoder*, 406 U.S. 205, regarding compulsory school attendance, and free exercise of religious expression. The difference in this matter is that Montana's criminal mischief statute is not facially flawed, but, as applied, if it seeks to punish for exercise of the First Amendment religion clauses.

There is no precedent set by this Court that explicitly authorizes a citizen to damage government public property in the process of exercising and protecting a First Amendment right, such as, specifically here, religious liberty. But, in this matter the Flathead County knew the ten commandment monument is unconstitutional, agreed to have it removed years before my action, according to County Commissioner minutes, and re-erected it after I was sentenced, leaving any other remedy ineffective regardless. Secondly, the Flathead County did not press criminal charges, but prosecution was brought by sole initiation of a County deputy attorney, complaint on oath, affirmed by the district court. I was denied at trial to face my accuser in violation of the Sixth Amendment.... See, e.g., *Crawford v. Washington*, 541 U.S. 36, 43; *Pointer v. State of Texas*, 380 U.S. 400; *Williams v. Florida*, 399 U.S. 78, 100; *Apodaca v. Oregon*, 406 U.S. 404, 410. The essential feature of a jury lies in the the interposition between the accused and accuser, and the confrontation is essential to a fair trial.

Finally, Montana law authorizes self-help in abatement of a public nuisance if especially injurious. See, § 27-30-204, MCA. Montana law further authorizes the use of force. See, 49-1-103, MCA. The plain language of the statutes is clear and unambiguous.

The Supremacy Clause provides that the judges in every state shall be bound by the federal Constitution, any thing in the Constitution or laws of any state to the contrary notwithstanding. *United States Constitution Art. VI, Cl. 2*. This Clause creates a rule of decision directing state courts that they must not give effect to state laws that conflict with federal law. *Espinoza v. Mont. Dept. of Revenue*, 591 U.S. 464. See also, *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324.

This Court has held that, "[w]e may not, however, vitiolate constitutional guarantees when they have the effect of allowing the guilty to go free." Cf. *Kyllo v. United States*, 533 U.S. 27, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001). Under the circumstances of this particular case, the Establishment and Exercise religion clauses at minimum do just that.

Here, I am being punished for exercising my First Amendment right to freedom of religion (Establishment) and religious liberty (Exercise) while the State of Montana continues to take a position on questions of religious beliefs. See, *County of Allegheny v. ACLU*, 492 U.S. 573, 593-94.

Without bail, I will suffer further cruel and unusual punishment in violation of the Eighth Amendment in addition to the First, Sixth, and Fourteenth. Plus, state Statutory rights, both applicable to the states under the Supremacy Clause.

CONCLUSION

[Redacted] The content contained herein is made under penalty of perjury, whereby witnessed below. Bail should be granted and Anthony released on his own recognizance pending certiorari.

NOTICE: Appended lower court records are not being served on Counsel of record due to complications while incarcerated. Counsel of record holds a copy of the record.

Respectfully executed this 23<sup>rd</sup> day of November, 2024, under penalty of perjury.

*[Handwritten signature of Anthony Weimer]*

ANTHONY WEIMER  
50 Crossroads Dr. Shelby, MT 59474

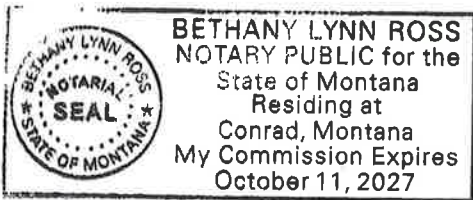
State of Montana  
County of Toole

This document made under penalty of perjury before me on 11/23/24  
by Anthony Weimer

*[Handwritten signature of Bethany Ross]*  
Bethany Ross  
Printed name

Notary Public for the State of Montana

Residing at Conrad, MT



My Commission expires: October 11, 2027

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

ANTHONY WEIMER  
*Petitioner,*

vs.

STATE of MONTANA  
*Respondent.*

PROOF OF SERVICE

I, Anthony Weimer, do certify or declare that on this date, 7<sup>th</sup>  
day of December, 2024, as required by Supreme Court Rule 29 and 28  
U.S.C. § 1746 I have served the enclosed

*Application for Bail Pending Petition for Writ of Certiorari*


on each party to the above proceeding or that party's Counsel, and on every  
other person required to be served, by depositing in the Prison Mail  
System an envelope, containing the above document(s), requesting  
Standard first-class postage.

Attorney General of Montana  
215 N. Sanders St.  
Helena, MT 59601

Flathead County Attorney  
820 S. Main  
Kalispell, MT 59901

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7<sup>th</sup> day of December, 2024

  
ANTHONY WEIMER  
Counsel, pro se



# APPENDICES

- APPENDIX A NOTARIAL CERTIFICATE - Witnessing bail motion
- APPENDIX B Montana Supreme Court - Order Dismissing Appeal
- APPENDIX C Montana Supreme Court - Oct. 3<sup>rd</sup>, 2023, order denying bail
- APPENDIX D Montana Supreme Court - May 23<sup>rd</sup>, 2023, Order denying bail rehearing
- APPENDIX E Montana Supreme Court - April 11<sup>th</sup>, 2023, Order denying bail
- APPENDIX F District Court - March 29<sup>th</sup>, 2023, Order denying renewed motion for bail Dkt. 296.
- APPENDIX G District Court - Jan. 6<sup>th</sup>, 2023, Order denying bail without prejudice Dkt. 274.
- APPENDIX H District Court - Dec. 28<sup>th</sup>, 2022, Amended judgement and sentence Dkt. 273.
- APPENDIX I In the Montana Supreme Court - Motion to stay execution of Judgement August 30<sup>th</sup>, 2023, Appellate Defender.
- APPENDIX J In the District Court - Reply to State's response to Defendant's renewed Motion to stay, Feb. 23<sup>rd</sup>, 2023, Dkt. 279.

# NOTARIAL CERTIFICATE

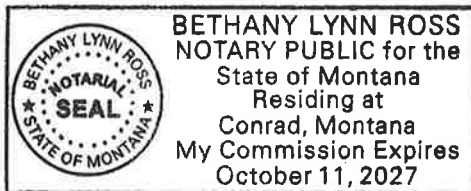
## Signature Witnessing

State of Montana

County of Toole

The attached record was signed before me on 11/23/24 by  
(Date)

Anthony Weimer  
(Name of signer(s).)



Bethany Ross  
(Notary Signature)

[Affix stamp above]

This certificate has been attached to the Motion  
(Type of record or document)

consisting of 4 page(s), dated 11/23/24

Any evidence that this certificate has been detached or removed from the above described document may render the notarization invalid or unacceptable.

APPENDIX A

ORIGINAL

FILED

10/23/2024

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 23-0100

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0100

FILED

OCT 23 2024

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ORDER

ANTHONY CRAIG WEIMER,

Defendant and Appellant.

Counsel for Appellant Anthony Craig Weimer filed a motion and brief asking to be allowed to withdraw from this appeal on grounds that counsel has been unable to find any nonfrivolous issues to raise on appeal, pursuant to § 46-8-103(2), MCA, and *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). Weimer responded to counsel's brief and objected to counsel's motion.

The Court has now independently examined the record pursuant to § 46-8-103(2), MCA, and *Anders*. We have considered the arguments raised by counsel and by Weimer. We conclude there are no arguments with potential legal merit that could be raised in Weimer's appeal in this case.

IT IS THEREFORE ORDERED that this appeal is DISMISSED.

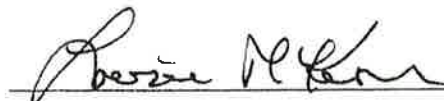
The Clerk is directed to provide copies of this Order to all counsel of record and to Weimer personally.

DATED this 23rd day of October, 2024.

S/ MIKE MCGRATH

  
Chief Justice

S/ LAURIE MCKINNON



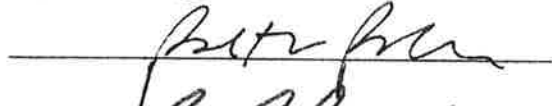
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APPENDIX B

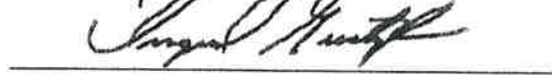
S/ JAMES JEREMIAH SHEA



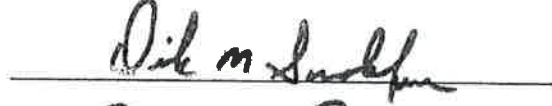
S/ BETH BAKER



S/ INGRID GUSTAFSON



S/ DIRK M. SANDEFUR



S/ JIM RICE



Justices

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0100

FILED

OCT - 3 2023

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ORDER

ANTHONY CRAIG WEIMER,

Defendant and Appellant.

Defendant and Appellant Anthony Craig Weimer, via counsel, has moved for a stay of the execution of a sentence of the Eleventh Judicial District Court, Flathead County, in Cause No. DC-20-207C, pursuant to M. R. App. P. 22(6). The State of Montana indicated to Weimer’s counsel that it would object to Weimer’s motion, but it did not file a response.

A jury found Weimer guilty of felony Criminal Mischief. On December 6, 2022, while released from custody on his own recognizance and awaiting sentencing, Weimer filed a lengthy pro se Motion to Dismiss, in which Weimer stated that he was invoking “Art. II, Part II [sic], Section 12 of the Montana Constitution<sup>1</sup> for the defense of his person and § 49-1-103, MCA,<sup>2</sup> to use any force necessary to protect his person and shall exercise his equal right to arrest this Court, Plaintiff and any other offenders acting on behalf of the government pursuant to § 46-6-502(1), MCA[.]”<sup>3</sup> Shortly thereafter, the State petitioned

<sup>1</sup> Article II, Sec. 12, of the Montana Constitution provides, “The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.”

<sup>2</sup> Section 49-1-103, MCA, provides, “Any necessary force may be used to protect from wrongful injury the person or property of one’s self, of a wife, husband, child, parent, or other relative or member of one’s family, or of a ward, servant, master, or guest.”

<sup>3</sup> Section 46-6-502(1), MCA, provides, “A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person’s immediate arrest. The private person may use reasonable force to detain the arrested person.”

to revoke Weimer's release, arguing that Weimer's threat to forcibly "arrest" the Judge, the prosecutors, and other government employees—considered in context of his previous communications, his actions in the underlying criminal matter, and a pattern of escalating accusations against the State and the court—"reasonably tend to produce a fear that his actions will be carried out." The District Court then issued an arrest warrant, setting a \$200,000 bond, and Weimer was remanded into custody on December 12, 2022, where he remained until his sentencing hearing.

The District Court sentenced Weimer to five years with Department of Corrections. In its sentencing order, it referenced Weimer's motion to dismiss, explaining: "The motion, marked by hostility towards the judiciary and judicial process, concludes with the Defendant invoking his perceived right to arrest the court and use any force necessary to protect his person. Given Defendant's escalating behavior, placement with the Montana Department of Corrections is appropriate . . . ."

Weimer then moved to stay execution of sentence. At a subsequent hearing, the court denied bail, noting that at sentencing, it found that Weimer poses a danger to the safety of any person or the community, referencing Weimer's "escalating behavior and hostility to the Court and officers of the court" as one of several bases for its finding.

Weimer now asks this Court to reverse the District Court's denial of stay. He alleges that the remarks he made in his motion to dismiss are insufficient to justify the court finding him to be a danger to the community and the court abused its discretion in denying the stay.

If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment must be stayed by the trial court. Section 46-20-204(2), MCA. A defendant should be admitted to bail bond pending appeal if "the defendant is not likely to flee or pose a danger to the safety of any person or the community." Section 46-9-107, MCA. If, in the trial court's discretion under § 46-9-107, MCA, it admits a convicted defendant to bail pending appeal, it must stay the execution of the sentence under these statutes. However, if the trial court does not admit the defendant to bail pending appeal, there is no mandate to stay his sentence under § 46-20-204(2), MCA. *Moore v. McCormick*, 260 Mont. 305, 307-08, 858 P.2d 1254, 1256 (1993).

When considering an appellant's motion to stay under M. R. App. P. 22, this Court reviews the trial court's denial of a stay for abuse of discretion. *City of Missoula v. Mountain Water Co.*, No. DA 15-0375, Or. (Mont. Aug. 18, 2015). An abuse of discretion occurs when a court acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason, in view of all the circumstances, ignoring recognized principles resulting in substantial injustice. *State v. Nelson*, 2008 MT 359, ¶ 20, 346 Mot. 366, 195 P.3d 825 (citation omitted). In this case, we find no abuse of discretion in the District Court's determination that Weimer's statements indicated that he posed a danger to the community. In making its ruling, the court found that Weimer's statements about the right to bear arms, the use of force, and his intention to conduct a citizen's arrest of the prosecutor, the Judge, and other government employees was not out of character for Weimer, but rather was part of a pattern of "escalating behavior and hostility."

IT IS THEREFORE ORDERED that Appellant's motion for stay of execution of judgment in Cause No. DC-20-207C is DENIED.

The Clerk is directed to provide copies of this order to all counsel of record.

DATED this 3<sup>rd</sup> day of October, 2023.

S/ MIKE MCGRATH



Chief Justice

S/ DIRK M. SANDEFUR



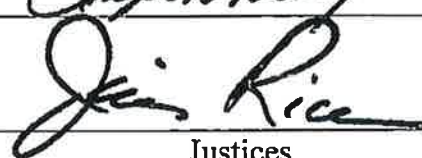
S/ JAMES JEREMIAH SHEA



S/ INGRID GUSTAFSON



S/ JIM RICE



Justices

ORIGINAL

FILED

05/23/2023

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 23-0100

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0100

FILED

MAY 23 2023

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ORDER

ANTHONY CRAIG WEIMER,

Defendant and Appellant.

Self-represented Appellant Anthony Craig Weimer petitions this Court for rehearing of an April 11, 2023 Order, stating that this Court overlooked his question concerning his request for stay and release. In the Order, this Court denied his various requests: his motion to disqualify the Justices; his request for disclosure; his request for emergency suspension of the rules, and his emergency motion to stay judgment and for immediate release.

Weimer puts forth that the District Court "should have stayed execution of sentence pending appeal." He provides a copy of the District Court's order where, following the March 29, 2023 hearing, the court denied his renewed motion to stay his sentence. He states that the court's denial was due to Weimer not having a chemical or mental health evaluation. Weimer alleges violations of due process of law at the hearing and missing transcripts on appeal. He also requests copies of other documents from the court's record.

Weimer has had two hearings in the District Court concerning his request for a stay and his release pending appeal. The District Court explained that Weimer's citation to § 46-9-107, MCA, did not apply because the court's judgment did not impose a fine only and a District Court, not a Justice Court, rendered the conviction and judgment. Harmonizing § 46-9-107, MCA, with § 46-20-240(2), MCA, the District Court concluded that "[a]dmittance to bail is thus a prerequisite to a stay." The court pointed out that

APPENDIX D

↵



because Weimer did not cooperate with the presentence investigation report prior to sentencing, the court had no information to determine Weimer's risks and needs in contrast to the public's safety.

Weimer has not provided any criteria, pursuant to M. R. App. P. 20(1), to warrant rehearing. This Court considered Weimer's previous requests and provided the reasons for denial in its Order. We point out that in a March 30, 2023 filing with this Court, Weimer provided a copy of the State's motion concerning his transport to the District Court for the hearing. His renewed arguments lack merit. We conclude again that Weimer is not entitled to a stay of his sentence or release because the District Court is the appropriate venue to entertain his motions. Upon review of this Court's docket, the transcripts were filed on May 5, 2023. Weimer should have received the notice, re-sent on May 12 after being returned. Since then, additional transcripts have been placed in his pending appeal.<sup>1</sup> Weimer should receive another notice, sent on May 19, 2023.

Weimer should place his arguments concerning his conviction and sentence in his briefs on appeal. We further point out that Weimer's opening brief is due on or before Monday, June 19, 2023. Therefore,

IT IS ORDERED that Weimer's Petition for Rehearing is DENIED.

IT IS FURTHER ORDERED that Weimer's final request for other District Court documents is GRANTED and the Clerk of the Supreme Court will mail copies of the listed documents from the District Court record: #1, 2, 4, 14, 18, 22, 26, 28, 29, 100, 108, and 128, to Weimer at his last known address.

The Clerk is directed to provide a copy of this Order to counsel of record and to Anthony Craig Weimer personally.

DATED this 20<sup>th</sup> day of May, 2023.

S/ MIKE MCGRATH

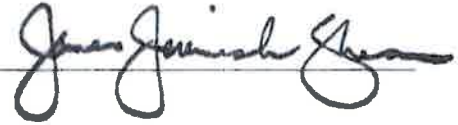
  
Chief Justice

<sup>1</sup> In early April and May, 2023, the additional transcripts were inadvertently filed in Weimer's "closed" appeal, No. DA 22-0537, because that case number was listed on the cover sheet.

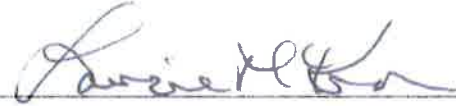
S/ INGRID GUSTAFSON



S/ JAMES JEREMIAH SHEA



S/ LAURIE MCKINNON



S/ JIM RICE



Justices

ORIGINAL

FILED

04/11/2023

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 23-0100

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0100

FILED

APR 11 2023

Bowen Greenwood  
Clerk of the Supreme Court  
State of Montana

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ORDER

ANTHONY CRAIG WEIMER,

Defendant and Appellant.

Self-represented Appellant Anthony Craig Weimer has filed five pleadings with this Court: (1) Disqualification of Justice(s) and Request for Disclosure of Others; (2) Request for Emergency Suspension of the Rules; (3) "Emergency Motion to Stay Judgment and For Immediate Release;" (4) Supplemental Appendix to Emergency Motion to Stay Sentence, providing that the Flathead County District Court will hold a hearing on his motion to stay judgment on March 29, 2023, and (5) "Motion for Court Order of Transfer Copy of Record to Defendant and Notice Regarding District Court Order (DKT 281)." Appellee State of Montana has not filed a response.

First, Weimer "disqualifies Justice Mike McGrath from hearing or deciding matters in this appeal." Weimer lists three reasons. He contends that Chief "Justice McGrath conspired with [Judge] Ulbricht to deny her disqualification" and admits that his notice was not a "motion" and did not contain an affidavit, pursuant to § 3-1-805, MCA. He further contends that this Court erred in denying his 2022 petition for a writ of supervisory control because "[t]he issues would have resolved the case without going to trial." Weimer asks for disqualification of Chief Justice McGrath and Justice Shea because "they are Catholic." He alleges that the Chief Justice has "exhibited egregious misconduct on Weimer" and has "infringe[d] upon Weimer's fundamental rights and harass him." Weimer also requests disclosure of the Justices' religious affiliations and beliefs.

APPENDIX E

Second, pursuant to M. R. App. P. 29, Weimer requests suspension of the rules in a verified filing based upon good cause. He states that expediting the decision in this matter is proper because he has been incarcerated at the Missoula Assessment Sanction Center (MASC) for more than two months and lacks access “to adequate legal resources . . . .” He reiterates that his underlying case could have been decided in his writ of supervisory control last year, avoiding the need for a trial.

Third, Weimer moves this Court to stay the court’s judgment and to release him immediately. As grounds, he states that “Weimer had filed a motion to stay in the trial court.” He adds that his motion in District Court was denied. He points out that “[p]ursuant to § 46-9-107, MCA, a person intending to appeal must be admitted to bail.” (Emphasis in original). Weimer renewed his motion and the court set a hearing for March 29, 2023. He provides that he cannot appear in person because he is incarcerated and because “[t]he facility does not offer services compatible with the requirements for a defendant[‘s appearance before a judge . . . .” He puts forth that he does not trust the presiding judge. He requests that this Court “issue an order staying judgment and the release of Weimer’s incarceration.” Fourth, Weimer includes his notice of non-ability to participate in the court-ordered hearing set for March 29, 2023, due to MASC’s lack of services.

Lastly, Weimer moves this Court to transfer a copy of the District Court record to him while he is incarcerated at MASC. He points out that he has no access to the record. He also points out that the District Court filed its order granting his request for payment of transcripts.

Weimer misunderstands Montana law. Weimer’s first pleading for disqualification and disclosure is not appropriate or proper because he misconstrues the facts. The reason for the denial of his motion for disqualification was due to untimeliness—the motion was not filed thirty days before trial. He presents none of the criteria listed in § 3-1-803, MCA, for disqualification of a justice. Weimer provides no legal authority for his other request concerning religious affiliation. Weimer’s request for the suspension of rules is not warranted. He has not shown good cause. Sections 46-20-204, and -205, MCA, govern a



request for a stay in a criminal proceeding. *See* M. R. App. P. 22(6). For Weimer, § 46-20-204(2), MCA, provides that “[i]f an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment must be stayed by the trial court or by the reviewing court.” We point out that the State moved the District Court to transport and detain Weimer for this hearing, as listed in this Court’s docket on March 30, 2023. The District Court considered Weimer’s motion for a stay and immediate release, and Weimer was able to appear for the hearing.

Lastly, this Court will provide copies of the record to Weimer, beginning when Judge Ulbricht became the presiding Judge. There are about 146 items. This Court will not entertain another request for copies after this Order. Therefore,

IT IS ORDERED that Weimer’s:

1. Disqualification of Justice(s) and Request for Disclosure of Others is DENIED;
2. Request for Emergency Suspension of the Rules is DENIED;
3. “Emergency Motion to Stay Judgment and For Immediate Release;” is DENIED;
4. Supplemental Appendix to Emergency Motion to Stay Sentence, providing that the Flathead County District Court will hold a hearing on his motion to stay judgment on March 29, 2023, is DEEMED moot; and
5. “Motion for Court Order of Transfer Copy of Record to Defendant and Notice Regarding District Court Order (DKT 281)” is GRANTED in part, and the Clerk of the Supreme Court will mail copies of the documents from item #131 to item # 285, except for item #261(pre-sentence investigation report), to Weimer at his last known address.

The Clerk is also directed to provide a copy of this Order to counsel of record and to Anthony Craig Weimer personally.

DATED this 11 day of April, 2023.

SI. INGRID GUSTAFSON



S/ LAURIE MCKINNON

Laurie McKinnon

S/ JAMES JEREMIAH SHEA

James Jeremiah Shea

S/ JIM RICE

Jim Rice

Justices

Chief Justice Mike McGrath did not participate in this matter.

1 Heidi J. Ulbricht  
2 District Judge, Department 3  
3 Flathead County Justice Center  
4 920 South Main Street, Suite 310  
5 Kalispell, MT 59901  
6 Telephone: (406) 758-5906

7 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF  
8 THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

9 \* \* \* \* \*

10 STATE OF MONTANA,

11 Plaintiff,

Cause No. DC-20-207C

12 v.

ORDER DENYING RENEWED  
MOTION TO STAY SENTENCE

13 ANTHONY WEIMER,

14 Defendant.

15 Defendant previously moved to stay his sentence, fines, fees and costs asserting that he  
16 “will personally appeal” the matter but that the sentence, fines, fees and costs inhibit his ability  
17 to do so. His proposed order indicated that the motion is brought pursuant to § 46-20-204, MCA.  
18 The Court denied the previous motion without prejudice noting that § 46-20-204, MCA, was  
19 predicated on an appeal having been taken.

20 After filing a notice of appeal with the Montana Supreme Court, Defendant filed the  
21 instant “Renewed Motion to Stay Sentence.” Dkt. 275. Defendant’s renewed motion is based on  
22 the assertion that he has a right to be admitted to bail pursuant to § 46-9-107, MCA and released  
23 on his own recognizance pursuant to §46-9-111, MCA. The State opposed the motion and sought  
24 a hearing on Defendant’s request to be admitted to bail. Dkt. 278. Defendant filed a *Reply to*  
25 *State’s Response to Renewed Motion to Stay Sentence* in which he stated that he did not oppose  
26 a hearing. Dkt. 279. The Court held a hearing on March 29, 2023. Dkt. 295.

27 Having considered the briefings and argument of the parties, the Court enters the  
28 following:

ORDER

The Defendant’s *Renewed Motion to Stay Sentence* is DENIED.

RATIONALE

§ 46-9-107, MCA’s mandatory release on bail to a “person intending to appeal” applies  
to: 1) a judgment imposing a fine only; or 2) from any judgment rendered by a justice’s court or  
city court. Neither of these circumstances apply here. The judgment did not impose a fine only

APPENDIX B

5

1 and the conviction and judgment in this matter were rendered in the District Court, not a justice's  
2 court or city court. The remainder of § 46-9-107, MCA, provides:

3 The court shall order the detention of a defendant found guilty of an offense who  
4 is awaiting imposition or execution of sentence or a revocation hearing or who has  
5 filed an appeal unless the court finds that, if released, the defendant is not likely to  
6 flee or pose a danger to the safety of any person or the community.

7 Detention is thus required of a defendant "who has filed an appeal unless the court finds  
8 that, if released, the defendant is not likely to flee or pose a danger to the safety of any person or  
9 the community." § 46-9-107, MCA. The statute harmonizes with the requirements of § 46-20-  
10 204, MCA, in that § 46-2-204(2), MCA, provides for a stay of a sentence of imprisonment only  
11 where the defendant is admitted to bail. Admittance to bail is thus a prerequisite to a stay.

12 A jury found Defendant guilty of felony criminal mischief. Since the Defendant failed to  
13 cooperate in the PSI process, the Court had no information regarding Defendant's possible  
14 chemical use, psychological information, or risk assessment. The Court committed the Defendant  
15 to the Department of Corrections noting his increasingly marked hostility towards the judiciary  
16 and judicial process and his written assertions (Dkt. 257) that he had a right to arrest the Court  
17 and use any for necessary to protect his person. Given his escalating behavior, the Court  
18 determined that Defendant's placement with the Montana Department of Corrections was  
19 appropriate with the goal of meeting the Defendant's needs, reducing his risk of recidivism and  
20 keeping the public safe. (See Court Doc. 272). These findings have not been refuted by  
21 Defendant's motion and the Court cannot conclude that the Defendant is not likely to flee or pose  
22 a danger to the safety of any person or the community.

23 ELECTRONICALLY SIGNED AND DATED BELOW.

24 cc: Stacy Boman, Attorney for the State  
25 Anthony Weimer, *pro se* C/O Department of Corrections  
26  
27  
28



1 a. \$250 for one or more misdemeanor charges and no felony charges or \$800 for one or more felony charges.

2

3 b. offender shall pay costs incurred by the Office of Public Defender for providing counsel in the criminal trial.

4 **Defendant to pay Public Defender fees of \$800 - Waive \$800 = \$0**

5

6 15. The Defendant shall pay the following fees and/or charges: **Payment is to be made online at https://svc.mt.gov/doi/opp/COROffenderPay/cart OR by submitting a money order or cashier's check to the Department of Corrections, Collections Unit, PO Box 201350, Helena, MT 59620.**

7

8 c. The Probation & Parole Officer shall determine the amount of supervision fees (§46-23-1031, MCA) to be paid each month (\$50 per month if the Defendant is sentenced under §45-9-202, MCA, dangerous drug felony offense and placed on ISP). The DOC shall take a portion of the Defendant's inmate account if the Defendant is incarcerated.

9

10 d. A \$50 fee at the time a PSI report is completed, unless the court determines the Defendant is not able to pay the fee within a reasonable time (46-18-111, MCA). Please include your District Court case number & DOC offender ID #. **Defendant to pay \$50.**

11

12 e. The Defendant shall pay court ordered restitution. Please include your District Court case number & DOC offender ID #. The Defendant shall be assessed a 10% administration fee on all restitution ordered. All of the methods for collection of restitution provided under 46-18-241 through 46-18-249, MCA, shall apply, including garnishment of wages and interception of state tax refunds. Pursuant to 46-18-244(6)(b), MCA, the Defendant shall sign a statement allowing any employer to garnish up to 25% of his/her wages. The Defendant shall continue to make monthly restitution payments until he/she has paid full restitution, even after incarceration or supervision has ended. **Restitution is owed as follows:**

13

14

15

16 **\$6,900.00**

17 **Montana Association of Counties Property & Casualty Trust**

18 **Claim #: PRFL15035157**

19 **2717 Skyway Dr Ste A**

20 **Helena MT 59602**

21

22 16. The Defendant, convicted of a felony offense, shall submit to DNA testing. (§44-6-103, MCA)

23

24 17. The Defendant shall not abscond from supervision. Absconding is a non-compliance violation as defined in §46-23-1001(1), MCA.

25

26

27

28

5

1 18. The Defendant shall obtain a chemical dependency evaluation by a state-approved evaluator and follow all of the evaluator's treatment recommendations.

2

3 19. The Defendant shall obtain a mental health evaluation/assessment by a state-approved evaluator and follow all of the evaluator's treatment recommendations.

4

5 20. The Defendant shall not possess or use any electronic device or scanner capable of listening to law enforcement communications.

6

7 21. The Defendant shall not enter any bars or casinos.

8

9 22. The Defendant shall not knowingly associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer outside a work, treatment, or self-help group setting. The Defendant shall not associate with persons as ordered by the court or BOPP.

10

11 23. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.

12

13 24. The PSI report shall be released by the Department to certain persons, such as treatment providers, mental health providers, and/or medical providers, as needed for the Defendant's rehabilitation.

14

15

16 Defendant is to be given credit for seventeen (17) days served in custody pending final disposition in this matter.

17

18 Defendant is to be given credit of eleven (11) months for time served on probation from November 23, 2020-October 21, 2021.

19

20 Defendant is hereby advised that he has 120 days from the date of filing this Judgment and Sentence to contest any perceived differences between this written Judgment and the Court's oral pronouncement of sentence.

21

22

23

24

25 Any bond posted in this matter is hereby exonerated.

26

27 DONE IN OPEN COURT the 19th day of December, 2022.

28 ELECTRONICALLY SIGNED AND DATED BELOW.

6

Electronically Signed By:  
Hon. Judge Heidi J. Ulbricht  
Wed, Dec 28 2022 12:31:40 PM

APPENDIX G

FILED  
01/06/2023  
Paul L. Allison  
CLERK  
Flathead County District Court  
STATE OF MONTANA  
By Stacy Borman  
DC-15-010-0000207-01  
Ulbricht, Heidi J  
274.00

1 Heidi J. Ulbricht  
2 District Judge, Department 3  
3 Flathead County Justice Center  
4 920 South Main Street, Suite 310  
5 Kalispell, MT 59901  
6 Telephone: (406) 758-5906

7

8 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT OF  
9 THE STATE OF MONTANA, IN AND FOR THE COUNTY OF FLATHEAD

10

11 STATE OF MONTANA, Plaintiff,

12 Cause No. DC-20-207C

13

14 v. ANTHONY WEIMER, Defendant.

15

16 ORDER ON "MOTION TO STAY SENTENCE AND TO PAY FINES, COSTS AND FEES PENDING APPEAL"

17

18 A jury found Defendant guilty on August 24<sup>th</sup> and the Court sentenced him to the Department of Corrections for a period of five (5) years.

19

20 Defendant now moves to stay his sentence, fines, fees and costs asserting that he "will personally appeal" the matter but that the sentence, fines, fees and costs inhibit his ability to do so. His proposed order indicates that the motion is brought pursuant to § 46-20-204, MCA.

21

22 § 46-20-204, MCA, is titled "Stay of execution and relief pending appeal" and provides:

23 (1) If an appeal is taken, a sentence of death must be stayed by order of the trial court until final order by the supreme court.

24 (2) If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment must be stayed by the trial court.

25 (3) If an appeal is taken, a sentence to pay a fine or a fine and costs must be stayed by the trial court or by the reviewing court.

26 (4) If an appeal is taken and the accused was admitted to probation, the accused shall remain on probation or post bail.

27

28 Defendant's motion indicates he has not filed an appeal but each of the above subsections is predicated on an appeal being taken. The motion is accordingly DENIED WITHOUT PREJUDICE.

ELECTRONICALLY SIGNED AND DATED BELOW.

cc: Stacy Borman, Attorney for the State  
Anthony Weimer, pro se C/O Department of Corrections

Electronically Signed By:  
Hon. Judge Heidi J. Ulbricht  
Fri, Jan 06 2023 09:59:56 AM

Anthony C. Weimer  
NCDP - DOC/MASC  
2374 Mullen Rd.  
Missoula, MT 59701

INCARCERATED

CLERK OF DISTRICT COURT,  
2023 FEB 10 AM 11:37

FILED  
BY  
AHH  
DEPUTY

ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY, IN THE STATE OF MONTANA

STATE OF MONTANA  
Plaintiff

DC-20-207  
RENEWED MOTION TO STAY SENTENCE

ANTHONY CRAIG WEIMER  
Defendant

Defendant, Anthony Weimer, acting as his own attorney renews his motion for stay of sentence pending appeal. Per Court order the first motion to stay... was denied without prejudice on the basis that the motion did not indicate that an appeal was filed prior to the request. For State v. Striplin, 2014 P.3d 673, 2009 MT 36, D12, 349 Mont. 446 (Mont. 2009), Striplin's Counsel moved the Court to stay the... sentence pending appeal during the sentencing hearing. That Court denied the motion and ordered Striplin taken immediately to the detention center following her commitment to... sentence. However, the next day on Striplin's appeal making the court... stay of execution of her commitment pending appeal. Striplin then appealed the district court's judgment and sentence. Although it appears stay is not predicated on an appeal being filed prior to sentencing to stay, Id., the Defendant has filed a notice of appeal in this matter. Pursuant to § 46-9-103, MCA, a defendant has a right to be admitted to bail pending appeal unless the court finds that he is likely to flee or that he poses a danger to the safety of any person or to the community." (See *Ward v. State of Montana*, 2002 (Mont. 2002) (quoting *Wisc. v. Lincoln City Sheriff's Dept.*, 278 Mont. 473, 476, 925 P.2d 1172 (1996)). Defendant has appeared at every hearing for the last almost three years in this matter, and does not pose a flight risk. The court's rationale for a five (5) year DOC sentence was based on the Defendant's previous arrest for in his native district. But, the probation was served on local and federal law enforcement. For this, there is no danger to the safety of any person or to the community.

With the foregoing, the defendant requests admission to bail and release on his own recognizance pursuant to § 46-9-111, MCA.

Dated this 1<sup>st</sup> day of February, 2023

ANTHONY WEIMER, Pro Se

CERTIFICATE OF SERVICE  
I certify that true and accurate copies of the foregoing were served on the following:

Flathead County Attorney -  
820 S. Main St.  
Kalispell, MT 59901

ANTHONY WEIMER, Pro Se  
1/2/2023

1

275



Hon. Heidi J. Ulbright  
Eleventh Judicial District  
Flathead County Justice Center  
920 S Main, Ste 310  
Kalispell, MT 59901  
406-758-5906

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

STATE OF MONTANA,  
Plaintiff,  
vs.  
ANTHONY CRAIG WEIMER,  
Defendant.

Case No.: DC-20-207C  
AMENDED  
JUDGMENT AND SENTENCE

On June 29, 2020, the Defendant was charged with Criminal Mischief, a Felony in violation of section 45-6-101(1)(a), MCA, as the result of events on June 27, 2020. The matter came before the Court for a one-day bench trial on November 23, 2020. The Defendant was found guilty. The Court imposed a 3-year deferred imposition of sentence. The Defendant appealed the action to the Montana Supreme Court. The Defendant was being supervised by Probation and Parole. On October 21, 2021, the Montana Supreme Court reversed and remanded the case for a new trial because the record did not contain a written waiver of Weimer's right to a jury trial.

A 3-day Jury Trial concluded on August 24, 2022, and the Defendant was found guilty of Criminal Mischief, a Felony.

A hearing in aggravation and mitigation of sentence was held on December 19, 2022. In fashioning the sentence to be imposed in this matter, the Court is guided by the correctional and sentencing policy and principles of the State of Montana, §46-18-101, MCA, which require the Court to: (a) Punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable; (b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders; (c) provide restitution, reparation, and restoration to the victim of the offense; and (d) encourage and

1  
APPENDIX H

1. The Defendant shall be placed under the supervision of the Department of Corrections, subject to all rules and regulations of Adult Probation & Parole.
2. The Defendant must obtain prior written approval from his/her supervising officer before taking up residence in any location. The Defendant shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The Defendant will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.
3. The Defendant must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.
4. The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the Defendant must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.
5. Unless otherwise directed, the Defendant must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau. The Defendant must personally contact his/her supervising officer or designee when directed by the officer.
6. The Defendant is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.
7. The Defendant must obtain permission from his/her supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.
8. Upon reasonable suspicion that the Defendant has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, residence of the Defendant, and the Defendant must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the Defendant has violated the conditions of supervision.

3

provide opportunities for the offender's self-improvement, rehabilitation, and reintegration back into the community.

The maximum penalty for Criminal Mischief is a term not to exceed 10 years. A jury found the Defendant guilty. The Defendant maintains that the display of the Ten Commandments on Flathead County property is unlawful. Throughout this case the Defendant has filed various motions and writs with the Supreme Court all of which have been denied. The Defendant has responded to those denials by filing notices that the Montana Supreme Court's orders were invalid. The Defendant refused to participate in the preparation of the presentence investigation report, thereby leaving the court with no risk assessment addressing his needs and overall risk of reoffending. On December 6, 2022, approximately two weeks before the Defendant's sentencing hearing, he filed a Motion to Dismiss (doc. 257) that was divided into the following sections:

- I. The Charging Information and Verdict are Disharmonious to Convict the Defendant for Failure to State an Offense. *Mot. to Dismiss* at 1:20-22.
- II. Certain Justices of the Montana Supreme Court are Incompetent and Disqualified in this Matter. *Id.* at 2:20-22.
- III. This Court Lacks jurisdiction and Proceeding in this Matter is a Criminal Offense Against the Defendant. *Id.* at 3:19-20.

The motion, marked throughout by hostility towards the judiciary and judicial process, concludes with the Defendant invoking his perceived right to arrest the Court and use any force necessary to protect his person. Given Defendant's escalating behavior, placement with the Montana Department of Corrections is appropriate to enable assessment of the Defendant with the goal of meeting the Defendant's needs, reducing his risk of recidivism and keeping the public safe.

In consideration of the nature of the offense, prior criminal history, ability to maintain employment and make payments toward the court-ordered financial obligations, and the recommendations of the parties, and the Pre-Sentence Investigation prepared by Rae Baker of the Adult Probation and Parole Office,

IT IS THE JUDGMENT OF THE COURT that Defendant be committed to the Department of Corrections for a period of five (5) years.

As recommended conditions of probation, Defendant must comply with the following:

9. The Defendant must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen. The Defendant is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The Defendant must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.
10. The Defendant is prohibited from using or possessing alcoholic beverages and illegal drugs. The Defendant is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.
11. The Defendant is prohibited from gambling.
12. The Defendant shall pay all fines, fees, and restitution ordered by the sentencing court.
13. The Defendant shall pay the following fees and/or charges: Payment is to be made to the Eleventh Judicial District, Flathead County, Montana, Clerk of Court, 920 South Main, Suite 300, Kalispell, MT 59901.
  - a. Surcharge of \$15 for each misdemeanor. [§46-18-236(1)(a), MCA]  
Defendant to pay: \$0
  - b. Surcharge of the greater of \$20 or 10% of the fine for each felony offense. [§46-18-236(1)(b), MCA]  
Defendant to pay: \$20
  - c. Surcharge for victim and witness advocate programs of \$50 for each misdemeanor or felony charge under Title 45, Crimes; §61-8-401 (DUI); §61-8-406 (DUI-alcohol); or §61-8-411 (DUI-delta-9-tetrahydrocannabinol). [§46-18-236(1)(c), MCA]  
Defendant to pay: \$50
  - d. \$10.00 for court information technology fee. (§3-1-317, MCA)  
Defendant to pay: \$10
  - e. The Defendant shall pay costs of legal fees and expenses defined in §25-10-201, MCA, plus costs of jury service, prosecution, and pretrial, probation, or community service supervision or \$100 per felony case or \$50 per misdemeanor case, whichever is greater. (§46-18-232, MCA)  
Defendant to pay: \$3,133.36
14. Costs of assigned counsel: All payments for Public Defender fees assessed after July 1, 2017, can be made online at OPDfee.mt.gov, OR payments in the form of a money order, certified check or cashier's check made payable to OPD can be mailed to the Office of the State Public Defender, 17 W. Galena Street, Butte, MT 59701. The Defendant must include the court case number and an address and phone number. (§46-8-113, MCA)

4

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0100

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ANTHONY CRAIG WEIMER,

Defendant and Appellant.

**MOTION TO STAY EXECUTION OF JUDGMENT**

Pursuant to Rule 22(6), M.R.App.P. and Mont. Code Ann. § 46-20-204, Defendant and Appellant Anthony James Weimer respectfully moves for this Court to reverse the district court’s denial of his request to continue his release after conviction upon his own recognizance (OR release) and stay execution of his five-year Department of Corrections sentence pending appeal. The Attorney General’s Office has been contacted regarding this motion and indicates that the State of Montana objects.

On June 29, 2020, Mr. Weimer was charged with felony criminal mischief for desecrating the Ten Commandments erected on the lawn of the Flathead County Courthouse. He has spent the last three years

APPENDIX I

trying to prove his actions were not criminal. For all but 17 days spent in the county jail, Mr. Weimer safely remained in the community. He complied with the rules of both pre-trial and post-sentencing conditions. Mr. Weimer primarily represented himself, including filing his own motions and first appeal. Despite the long record of compliance, the district court denied his request to set bail while the current appeal worked its way through the system.

**A. Mr. Weimer is not likely to flee or pose a danger to the community.**

Montana law requires the trial court to stay a sentence of imprisonment "[i]f appeal is taken and the defendant is admitted to bail" Mont. Code Ann. § 46-20-204(2). Trial court must order the detention of a defendant found guilty of an offense, notwithstanding the filing of an appeal, "unless the court finds that, if released, the defendant is not likely to flee or pose a danger to the safety of any person or the community." Mont. Code Ann. § 46-9-107. Thus, "following a conviction, the presumption is that the court shall order detention." *Gleed v. State*, No. OP 13-0217, Or. (Mont. May 8, 2013). Reading the statutes together, this Court has held: "The plain intendment of the

language used [in § 46-20-204(2), MCA] is that if; in its discretion under § 46-9-107, MCA, and on making the required finding, the trial court admits the defendant to bail pending appeal, then the court must stay his sentence of imprisonment." *Moore v. McCormick*, 260 Mont. 305, 307, 858 P.2d 1254, 1256 (1993).

When considering an appellant's motion to stay under M. R. App. P. 22, this Court reviews the district court's denial of a stay for abuse of discretion. *State v. Schlepp*, DA 18-0244, Or. at 2 (Mont. June 12, 2018) *citing City of Missoula v. Mountain Water Co.*, No. DA 15-0375, Or. at 5-6 (Mont. Aug. 18, 2015). An appellant must demonstrate good cause for the relief requested. M.R.App.P. 22(2)(a)(i).

**B. Mr. Weimer's "Threatening" Motion to Dismiss**

The tide changed for Mr. Weimer on December 6, 2022, when he filed a Motion to Dismiss and included a paragraph that the new deputy county attorney and the second district court judge found to be threatening. In his motion, Mr. Weimer referenced, as he had many times before, Montana statutory and constitutional provisions providing for his own self-protection, including the citizen's arrest provisions of Mont. Code Ann. § 46-6-502(1). (12/6/2022 Motion to Dismiss at p. 7,

attached as Appendix A). In response to this perceived threat, the new deputy county attorney immediately petitioned to revoke Mr. Weimer's OR release and the district court issued a warrant for his arrest setting a \$200,000 bond. Two weeks later, the district court sentenced Mr. Weimer to five years in the Department of Corrections for criminal mischief. Since this was Mr. Weimer's first and only felony conviction, he had previously received a three-year deferred sentence for the same offense after his first trial. In imposing the custodial sentence and denying his request for bail and to stay the sentence pending appeal, the district court relied on the perceived threat in Mr. Weimer's Motion to Dismiss.

**C. Mr. Weimer's Conduct on Supervision.**

The district court's denial of Mr. Weimer's request to stay execution of sentence failed to take in the totality of his good conduct for the last three years. Bond for the felony criminal mischief charge was originally set at \$10,000. (D.C. Doc. 6.) However, the Montana Pretrial Public Safety Assessment scored Mr. Weimer's Pretrial Monitoring Level as "Passive." (*Ibid.*) Therefore, the county attorney did not oppose his request for OR release. (D.C. Doc. 8.) The Honorable Amy Eddy

granted Mr. Weimer's OR release. (D.C. Doc. 9.) Mr. Weimer continued to reside at his mother's residence in Kalispell in full compliance with his OR release conditions. (D.C. Doc. 9.) Mr. Weimer did not participate in the first PSI, but the PSI reported that he did not receive any write-ups for the nine days he served in jail before his OR release. (D.C. Doc. 69 at 4.) The PSI author recommended a fully suspended sentence: "In consideration of Mr. Weimer's lack of criminal history and the nature of the offense not posing a risk to community safety, I respectfully recommend the Court sentence the Defendant to Department of Corrections, suspended in its entirety, in a length of time sufficient for him to pay restitution entirely and complete any programming the Court deems appropriate." (D.C. Doc. 69 at 3-4.)

In a motion for a new trial filed before his first sentencing hearing, Mr. Weimer made the same arguments alleging judicial misconduct and protection of his personal rights. (D.C. Docs. 67 and 70) Additional federal filings from 2019 were submitted at sentencing where Mr. Weimer similarly invoked Montana's citizen arrest statute to remedy the Ten Commandments display. (D.C. Doc. 80 at Exhibit B.) Despite Mr. Weimer's provocative filings, on January 21, 2021, Judge

Eddy would sentence Mr. Weimer to a three-year deferred sentence.

(D.C. Doc. 79.)

Mr. Weimer remained on supervision under his deferred sentence while he pursued his appeal, on his own, to the Montana Supreme Court. This Court reversed his conviction on October 12, 2021. *State v. Weimer*, 2021 MT 266N, 407 Mont. 2, 496 P.3d 967. No bond had been set after the reversal, but on January 3, 2022, Judge Eddy ordered that Mr. Weimer was subject to the previous OR release conditions. (D.C. Doc. 123.) On January 24, 2022, the Honorable Heidi J. Ulbricht assumed jurisdiction over Mr. Weimer's criminal case. (D.C. Doc. 131.) The remand jury trial started eight months later on August 23, 2022. (D.C. Doc. 227.10.) Mr. Weimer represented himself for three days of trial. Rather than immediately being placed in custody after the guilty verdict, the district court allowed him to remain on his OR release and self-report to probation and parole. (8/24/2022 Tr. at 678.) Sentencing was held on December 19, 2022.

Mr. Weimer again did not participate in the PSI. (D.C. Doc. 241.) Based on its own investigation, the updated PSI reported that Mr. Weimer was 32 years old, he had two Kalispell speeding offenses from



2005 and 2008, and was still living in a garage studio behind his mother's house. The court had already issued an arrest warrant, but the PSI author again recommended a fully suspended sentence because Mr. Weimer had no criminal history, the non-violent nature of the criminal mischief offense and because he did not pose a risk to community safety. (D.C. Doc. 261 at 4.)

**D. Mr. Weimer qualifies for bail pending appeal.**

The court ignored the PSI sentence recommendation and the previous deferred sentence to impose a five-year custodial sentence to the Department of Corrections. At a subsequent hearing on bail, the State argued Mr. Weimer created a risk to the safety of the community. 3/29/2023 Bail Hearing Tr. at 193-194. The court again denied bail and again relied on the findings it made at sentencing to justify the increased sentence after remand based on Mr. Weimer's supposedly escalating behavior. 3/29/2023 Bail Hearing Tr. at 198-199, attached as Appendix B.) Other than one paragraph in one of the many filings submitted by Mr. Weimer, there was no evidence to support the idea that Mr. Weimer created a danger to the community. In fact, his record shows the complete opposite.

The non-violent nature of this first felony offense and Mr. Weimer's exemplary conduct while on pretrial release and post-trial supervision demonstrates that the district court abused its discretion in denying Mr. Weimer's request to stay execution of the sentence pending appeal. Mr. Weimer respectfully requests this Court reverse the district court's bond denial and stay execution of the judgment pending appeal subject to the previous OR release conditions.

Respectfully submitted this 30th day of August 2023.

OFFICE OF STATE PUBLIC DEFENDER  
APPELLATE DEFENDER DIVISION  
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By: /s/ Chad Wright  
CHAD WRIGHT  
Appellate Defender

2023 FEB 23 AM 10:52

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INCARCERATED

FILED  
BY MH  
DEPUTY

Attorney for Defendant

ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD  
COUNTY, IN THE STATE OF MONTANA

STATE OF MONTANA  
Plaintiff,

DC 20-207(C)

REPLY TO STATE'S RESPONSE TO  
DEFENDANT'S RENEWED MOTION  
TO STAY SENTENCE

✓  
ANTHONY CRAIG WEIMER  
Defendant.

Defendant, Anthony Weimer, acting as his own attorney, hereby provides reply to the State's Response to Defendant's Renewed Motion to Stay Sentence. Defendant is incarcerated and has been denied his legal papers, access to both State and Federal Courts, access to internet and email for obtaining a voluminous record and adequately and sufficiently defending himself. The legal resources available are limited, and missing many common law cases. Further, the cost and volume of the record would be overburdensome to be transferred in paper copy. This is a necessary disclosure.

Among also for the Court's consideration, the State refers to its Petition to Revoke "OR" Release filed on Dec. 9, 2022. The reference alleges threats contained therein, but provides no detailed argument as to the substance of any real cognizable threat. In the State's petition, there is citation to intimidation pursuant to 45-5-203(1)(b), MCA based on the Defendant's citizens arrest argument. But Arrest by a Private Person gives plain language that "the private person may use reasonable force to detain the arrested person." 46-6-502(2), MCA. There is no requirement that an arrested person be detained, neither what type of detainment. And "the citizens arrest does not limit the type of offense upon which a citizen's act in effecting an arrest." See, City of Missoula v. Losefo, 376 Mont. 161, 712, 330 P.3d 1180 (Mont. 2014). "Intimidate" means "to make timid; to frighten." See, State v. Martel, 273 Mont. 143, 902 P.2d 19. "Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." Virginia v. Black, 538 U.S. 343, 360 (2003). The State's fear of arrest and influence on the judiciary amounts to obstructing justice pursuant to 45-7-303(a)(d), MCA. Even assuming the State's assertion that the Defendant violated 45-5-203(1)(b), MCA, an arrest is accomplished either by a person's physical restraint or a result of a person's reasonable belief that the person is not free to leave. The Defendant made no such expression, but merely notified local and federal law enforcement.

APPENDIX J

Then, this court issued its arrest warrant on the basis that the Defendant "appeared" to have violated his conditions of release. A warrant unsupported by oath, affirmation or affidavit. See, U.S. Const. Amend. IV ("No warrants shall issue, but upon probable cause, supported by oath or affirmation...") (emphasis added); *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371 1380, 63 L. Ed. 2d 639, 651 (1980). The proper method for dealing with an individual's violation of release is found under 46-9-503(2), MCA. A prosecutor may make a written motion to the court for revocation of the order of release. Upon the motion, a judge may issue a warrant for the arrest of a defendant charged with violating a condition of release. The State made no such motion neither verified its application pursuant to 46-9-505(2), MCA. "No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause supported by oath or affirmation reduced to writing". See, Art. II, § 12 Mont. Const. The correct procedure for revocation of the order of release was not adhered to by the State, neither the Court. The State's basis for denial of the renewed motion to stay sentence and the desired outcome that transpired at the Dec. 19, 2022 sentencing hearing lacks merit for establishing the Defendant as a flight risk or a danger to the safety of others and the community. The basis for the Court's findings regarding Defendant's motion to dismiss violates due process. The guarantee of due process has both a procedural and a substantive component. The process requirement necessary to satisfy procedural due process comes into play only after a showing that a property or liberty interest exists. *State v. Egdorf*, 2003 MT 264, ¶19, 317 Mont. 436, ¶19, 77 P.3d 517, ¶19. Under the due process guarantee, every person must be given an opportunity to explain, argue and rebut any information that may lead to the deprivation of life, liberty, or property. *State v. McLeod*, 2002 MT 348, ¶18, 313 Mont. 358, ¶18, 61 P.3d 126, ¶18. Concerning due process at sentencing hearings, the Montana Supreme Court has held "[i]t is not the duration or severity of [t]he sentence that renders it unconstitutionally invalid; it is the careless or designed pronouncement of sentence on a foundation so extensively and materially false, which the prisoner had no opportunity to correct by services which counsel would provide, that renders the proceedings lacking in due process." *McLeod*, ¶19 (citing *Townsend v. Burke*, (1948), 334 U.S. 736, 741, 68 S. Ct. 1252, 92 L. Ed. 1690, 1693. (State v. Webb, 2005 MT 5, ¶19, 106 P.3d 521, 325 Mont. 317 (Mont. 2005) citing *Egdorf* and *McLeod*). This court shut the Defendant down immediately after pronouncement of sentence, even after he provided legal reasons.

Why sentence should not be imposed, and the parties never came to agreement on the contested issues. See also, U.S. Const. Amend. V, due process.

Finally, the state includes in its actual background that the Defendant's motion to dismiss contains insults to the Montana Supreme Court. Oddly, Justice Jim Rice advocated for out of court remedies in settling disputes during his speech at the Montana 1972 constitution's 50<sup>th</sup> anniversary. Strikingly, the statement Mr. Rice made, "To lose our institutions, over my dead body", is a threat of bodily injury up to and including death. Any reasonable observer could gather that the conduct Justice Rice is stating includes actual violence and physical fighting by two parties, one of whom ultimately dies. Justice Ingrid Gustafson applauded the speech, as well as, many members of the legislative branch. Clearly the state should recognize the difference between a real threat and an individual giving a warning in connection with an effort to bring an offender(s) into compliance with the law.

The Defendant is not opposed should the court conduct a bond hearing. But, Judge Ulbricht did witness Weimer speak publicly before the Kalispell City Council on November 7<sup>th</sup>, 2022, before she administered an oath to a new judge.

Dated this 18<sup>th</sup> day of February, 2023.

Anthony Weimer  
Defendant, Pro se

### CERTIFICATE OF SERVICE

I certify that true and accurate copies of the foregoing were served on the following:

Flathead County Attorney  
820 S. Main St.  
Kalispell, MT 59901

Anthony Weimer  
Defendant, Pro se 18/2/2023