

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 13 - 0584

STATE OF MONTANA,

Plaintiff and Appellant,

v.

STACEY DEAN RAMBOLD,

Defendant and Appellee.

FILED

SEP 04 2013

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

NOTICE OF APPEAL

NOTICE is given that the State of Montana, the Appellant above-named and who is the Plaintiff in that cause of action filed in the Thirteenth Judicial District, in and for the County of Yellowstone, as Cause No. DC-08-628, and pursuant to Mont. Code Ann. § 46-20-103(2)(h), hereby appeals to the Supreme Court of the State of Montana from the oral pronouncement of sentence of the district court of August 26, 2013; the oral pronouncement of sentence constitutes the judgment and has the substantive effect of imposing an illegal sentence. (Ex. 1, Case No. DC-08-628, 8/26/13 Sent. Hr'g Tr., at 45-47; copy attached.)

The instant notice of appeal is filed prematurely to preserve the State's right to appeal the controlling judgment of the district court. The appellate rules permit the premature filing of a notice of appeal. Mont. R. App. P. 4(b)(i) (stating a notice of appeal filed after the oral pronouncement of a decision or sentence but before entry of the written judgment or sentence is treated as filed on the date of the written entry).

The instant notice is filed prematurely because the State has been impeded in its effort to perfect its appeal by the usual means, which is the filing of a notice of appeal upon the entry of a written judgment. On August 30, 2013, the State's trial counsel, in the regular course of his duties and pursuant to law,¹ submitted to the district court a proposed written judgment that conformed to the oral pronouncement. (Ex. 2, 8/30/13 Letter to Judge Baugh from Scott Twito, with proposed written judgment; copy attached.) Rather than sign and enter the conforming written judgment, the district court on September 3, 2013, entered an order effectively announcing its intention to enter a nonconforming written judgment. (Ex. 3, Case No. DC-08-628, 9/3/13 Notice & Order, declaring statutory mandatory minimum

¹ See *State v. Waters*, 1999 MT 229, ¶ 26, 296 Mont. 101, 987 P.2d 1142 (stating the written sentence is "mere evidence" of the oral sentence and in the event a conflict exists between the oral sentence and the written judgment, the oral sentence controls) (citing *State v. Lane*, 1998 MT 76, ¶¶ 35-40, 48, 288 Mont. 286, 957 P.2d 9).

provisions had not been “given effect and taken into consideration” at the oral pronouncement, and stating, “if necessary and appropriate,” the court “will amend the mandatory minimum portion of the sentence” at a hearing set for Friday, September 6, 2013, at 1:30 p.m.; copy attached.) Based on the foregoing, the State files the instant notice to preserve its right under Mont. Code Ann. § 46-20-103(2)(h) to appeal the controlling judgment of the district court rendered August 26 in its oral pronouncement of sentence.

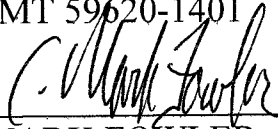
THE APPELLANT FURTHER CERTIFIES:

1. That this appeal is not subject to the mediation process required by Mont. R. App. P. 7.
2. That Mont. R. Civ. P. 54(b) does not apply.
3. Transcripts of the proceeding have been ordered from the court reporter contemporaneously with the filing of this notice of appeal.
4. Because this is an appeal by the State of Montana, no filing fee is owed.

Respectfully submitted this 4th day of September, 2013.

TIMOTHY C. FOX
Montana Attorney General
Justice Building
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: _____


C. MARK FOWLER
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing NOTICE OF APPEAL upon the Clerk of the District Court, each attorney of record, each court reporter, and each party not represented by an attorney in the above-referenced District Court action, as follows:

Mr. Ed Smith, Clerk
Montana Supreme Court
215 North Sanders
Helena, MT 59620

Ms. Sharon Gaughan
Thirteenth Judicial District Court Reporter
217 North 27th Street, Rm. 601
P.O. Box 35042
Billings, MT 59107-5042

Ms. Jan Barry
Thirteenth Judicial District Court Reporter
217 North 27th Street, Rm. 517
P.O. Box 35028
Billings, MT 59107-5028

Ms. Kristie Lee Boelter, Clerk
Yellowstone County District Court
P.O. Box 35030
Billings, MT 59107-5030

Mr. Jay F. Lansing
Attorney at Law
175 North 27th Street
Billings, MT 59101

Mr. Rod Souza
Attorney at Law
217 North 27th, Rm. 701
P.O. Box 35025
Billings, MT 59107-5025

DATED: _____

9/4/13