

DA 17-0340

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 64N

STATE OF MONTANA
and CITY OF BOZEMAN,

Plaintiff and Appellee,

v.

ZACHARY EVARTS,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DC-17-128C
Honorable John Brown, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Terry F. Schaplow, P.C., Attorney at Law, Bozeman, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Tammy K Plubell, Assistant
Attorney General, Helena, Montana

Kyla C. Murray, Bozeman City Attorney, Bozeman, Montana

Submitted on Briefs: January 31, 2018

Decided: March 27, 2018

Filed:



Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Zachary Evarts appeals from an order of the Eighteenth Judicial District Court, Gallatin County, dismissing his appeal from the Municipal Court of the City of Bozeman with prejudice for failing to timely file an appeal brief. We affirm.

¶3 On August 11, 2016, a Bozeman police officer initiated a traffic stop after which he cited Evarts with speeding and driving under the influence of alcohol or drugs (DUI). On April 7, 2017, during a Municipal Court hearing, Evarts pleaded guilty to amended charges of speeding and DUI per se after the Municipal Court orally denied his motion to suppress evidence and dismiss his charges. On April 18, 2017, Evarts initiated an appeal to District Court by filing a notice of appeal. The Municipal Court sent Evarts's Municipal Court record, including an electronic audio recording of the hearing, to the District Court the following day. On April 20, 2017, the District Court provided Evarts with notice it received his Municipal Court record on April 19, 2017, and stated, "Rule 14, Montana Uniform Municipal Court Rules of Appeal to District Court, provides that the appellant shall serve and file a brief within fifteen (15) days after the date on which the record is filed. Failure to file a brief within this time shall subject the appeal to summary dismissal." Evarts did not file a brief within the prescribed fifteen days. Evarts did file a notice that he intended

to file transcripts, which first needed to be prepared. Evarts submitted the electronic audio recording to an independent stenographer because the Municipal Court does not offer transcription. On May 2, 2017, the City of Bozeman filed an objection to Evarts's intention to file transcripts. On June 2, 2017, the District Court dismissed Evarts's appeal sua sponte for failing to timely file a brief on appeal. Evarts appeals.

¶4 On appeal, Evarts argues his District Court appeal brief was due fifteen days after he filed the transcripts, which he elected to have transcribed. We disagree. Several of the Montana Uniform Municipal Court Rules of Appeal to District Court (hereinafter "Rule") are instructive. "The appellant shall serve and file a brief within 15 days after the date on which the record is filed." Rule 14(a). "The record on appeal to district court consists of the notice of appeal, an electronic recording or stenographic transcription of the case tried, together with the judgment entered and all papers and exhibits filed in the municipal court." Rule 9(a). "[I]f an appellant fails to file a brief within the time provided by this rule, or within the time extended, the appeal shall be deemed without merit and subject the appeal to summary dismissal." Rule 14(c). "The appellant may have parts or all of the electronic recording transcribed for transmission to the district court." Rule 10(f).

¶5 Rule 9(a) allows for either "an electronic recording or stenographic transcription of the case tried." Either form is sufficient. Here, the District Court received Evarts's notice of appeal on April 18, 2017, and the Municipal Court record, including an electronic recording of Evarts's hearing, on April 19, 2017. Accordingly, the record was filed on April 19, 2017, and Evarts's time period to submit a brief began on that same day. The District Court provided Evarts with notice of its receipt and warned Evarts that a failure to

comply with Rule 14(a) and file his brief on appeal within fifteen days could result in summary dismissal. Under Rule 14(a), Evarts needed to serve and file his brief within fifteen days of April 19, 2017. Evarts failed to do so. An additional stenographic transcription of his Municipal Court hearing was unnecessary and Evarts's intention to have one prepared and file it in District Court neither alters Rule 14(a)'s mandatory timing nor excuses his failure to file his brief on appeal. Further, on June 2, 2017, when the District Court summarily dismissed Evarts's appeal, Evarts still had not filed the hearing transcripts or his brief or asked the District Court for additional time to do so. The District Court did not err in dismissing Evarts's appeal because after he failed to file a brief within fifteen days of April 19, 2017, his appeal was appropriately deemed to lack merit pursuant to Rule 14(c).

¶6 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶7 Affirmed.

/S/ LAURIE McKINNON

We Concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ BETH BAKER