

DA 13-0814

IN THE SUPREME COURT OF THE STATE OF MONTANA

2014 MT 160N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

SHAWN HOWARD WELLER,

Defendant and Appellant.

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APPEAL FROM: District Court of the First Judicial District,  
In and For the County of Lewis and Clark, Cause No. CDC-07-207  
Honorable Kathy Seeley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Shawn Howard Weller, self-represented; Shelby, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General; Mardell Ployhar, Assistant  
Attorney General; Helena, Montana

Leo J. Gallagher, Lewis and Clark County Attorney; Helena, Montana

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Submitted on Briefs: May 21, 2014  
Decided: June 11, 2014

Filed:

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Clerk

Justice Patricia Cotter delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), 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 In June 2007, Shawn Weller was charged with driving under the influence of alcohol, a felony. In September 2007, the State filed a Notice of Persistent Felony Offender (PFO). Following a jury trial held in February 2008, Weller was convicted of felony DUI. At Weller's sentencing hearing in March 2008, the First Judicial District Court, Lewis & Clark County, sentenced Weller to 22 years, with 17 years suspended. He was released in January 2012, but the State petitioned to revoke his suspended sentence in April 2012 for failure to comply with conditions of his sentence. In July 2012, the District Court revoked Weller's suspended sentence and remanded him to the Department of Corrections for 17 years. This sentence was subsequently affirmed by the Sentence Review Division. Weller failed to file a timely appeal but later moved this Court for permission to file an out-of-time appeal. We denied his motion.

¶3 In July 2013, relying on Rule 60(b), M. R. Civ. P. (Rule 60(b)), Weller moved to set aside the July 2012 District Court judgment, arguing that it was "void on its face" because the District Court erroneously, and in violation of § 46-11-205, MCA, allowed

the State to amend its petition to revoke his suspended sentence. On November 20, 2013, the District Court denied his motion, holding that Rule 60(b)—a rule applicable in civil cases but not criminal cases—did not authorize the court to take the action sought by Weller. Acting pro se, Weller appeals.

¶4 We affirm. Neither Rule 60(b) nor § 46-11-205, MCA, apply to Weller’s cause of action. Sections 46-11-201 through -205, MCA, exclusively address the procedure for the filing of an information. These statutes have no bearing whatsoever on the procedures that apply to the amendment of revocation petitions. Moreover, Rule 60(b), which sets forth the grounds for relief from a final judgment, order, or proceeding in a civil case, is a procedural rule that applies only to civil proceedings. It has no application in criminal cases. We therefore conclude that the District Court did not err in denying Weller’s motion.

¶5 Lastly, the District Court notified Weller in the order currently on appeal that he has exhausted the procedural alternatives available to him for challenging the court’s July 2012 order revoking his suspended sentence. The court informed Weller it would not respond to future filings pertaining to this cause number. We affirm this aspect of the court’s order as well.

¶6 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for noncitable memorandum opinions. The

issue in this case is legal and is controlled by settled Montana law which the District Court correctly interpreted.

¶7 Affirmed.

/S/ PATRICIA COTTER

We concur:

/S/ MIKE McGRATH  
/S/ MICHAEL E WHEAT  
/S/ BETH BAKER  
/S/ LAURIE McKINNON