DA 17-0527

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 315N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ADAM JUSTIN CHESTERFIELD,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DC-16-441
Honorable Karen Townsend, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Nathaniel S. Holloway, Paul T. Ryan, Paul Ryan & Associates, PLLC, Missoula, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Madison L. Mattioli, Assistant Attorney General, Helena, Montana

Kirsten Pabst, Missoula County Attorney, Missoula, Montana

Submitted on Briefs: October 17, 2018

Decided: December 27, 2018

Filed:

Justice James Jeremiah Shea 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, 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 Adam Justin Chesterfield appeals the Order of the Fourth Judicial District Court, Missoula County, denying his Motion to Dismiss his felony driving under the influence of alcohol (DUI) charge. We affirm.

¶3 On August 11, 2016, Chesterfield was stopped by Missoula police and cited for DUI. On August 24, 2016, the State filed an Information charging Chesterfield with felony DUI, fourth or subsequent offense, in violation of §§ 61-8-401(1)(a), 61-8-731, MCA. Chesterfield has prior DUI convictions from 2003, 2005, and 2011. Chesterfield conceded the validity of his 2003 and 2011 DUI convictions but challenged the 2005 conviction. On October 13, 2016, Chesterfield moved to dismiss the felony DUI on the grounds that his 2005 DUI conviction out of the Gallatin County Justice Court was constitutionally infirm. Chesterfield attached an affidavit that stated in relevant part:

> 5. I received my second DUI over a decade ago when I was only 24 years old (conviction date: October 13, 2005).
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> . . .
>
> 7. In 2005, I could not afford an attorney.
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> . . .
>
> 9. I do not remember being advised of my constitutional right to counsel before pleading guilty to DUI in 2005.

> 10. I do not remember voluntarily waiving my right to counsel before pleading guilty to DUI in 2005.
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> 11. I wanted to be represented by counsel, but as a 24-year old, I was intimidated by the formal process and unsure of my rights.
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> 12. I reviewed the Gallatin County records, and these records do not state that I was informed of my right to an attorney.
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> 13. The Gallatin County records also do not state that I waived my right to an attorney.
>
> . . .
>
> 15. In 2005, I was alone and unsure of my rights. I reluctantly pled guilty because I thought it was my only option.

Chesterfield did not file the Gallatin County Justice Court records as an exhibit or otherwise submit them as part of the record.

¶4 The State filed its response on November 15, 2016, seventeen days past the October 28, 2016 filing deadline.[1] The District Court denied Chesterfield's Motion to Dismiss, declining to consider his Motion well taken based on the State's untimely response and determining that Chesterfield did not overcome the presumption of regularity attached to the 2005 DUI conviction. On March 14, 2017, Chesterfield pled guilty to the felony DUI, while reserving his right to appeal the denial of his Motion to Dismiss. The District Court accepted his guilty plea. On July 11, 2017, the District Court sentenced Chesterfield to

[1] The District Court found that the response was late because "[a] new prosecutor was assigned to the case on November 15, 2016[,]" and "the original prosecutor who filed this case was on long-term health leave at the time that [Chesterfield's] opening brief was filed . . . ." Chesterfield contests this finding and argues the record establishes the "new prosecutor" was assigned to file the State's response in October. Regardless, the State concedes its response was untimely.

thirteen months confinement with the Department of Corrections, with three years suspended and the remainder of the thirteen months suspended upon successful completion of a residential alcohol treatment program. Chesterfield appeals.

¶5 This Court reviews discretionary trial rulings in criminal cases for an abuse of discretion. *State v. Winter*, 2014 MT 235, ¶ 10, 376 Mont. 284, 333 P.3d 222. We review for an abuse of discretion a district court's decision to grant or deny unsupported or unanswered motions or to enlarge the time allowed in which a motion is deemed to be submitted. M. Unif. Dist. Ct. R. 2(b), 2(d); *Winter*, ¶ 21; *Chapman v. Maxwell*, 2014 MT 35, ¶¶ 9–10, 374 Mont. 12, 322 P.3d 1029; *In re Marriage of Chase*, 237 Mont. 224, 229, 772 P.2d 1264, 1268 (1989). Whether a prior conviction may be used for sentence enhancement is generally a question of law, which we review de novo. *State v. Maine*, 2011 MT 90, ¶ 12, 360 Mont. 182, 255 P.3d 64.

¶6 We first address Chesterfield's argument that the District Court erred by considering the State's untimely brief in opposition to Chesterfield's Motion to Dismiss.

¶7 M. Unif. Dist. Ct. R. 2 provides in relevant part:

> (a) The moving party shall file a supporting brief upon filing a motion. The brief may be accompanied by appropriate supporting documents. Except as provided in M. R. Civ. P. 56(c), within fourteen days after service of the movant's brief, the opposing party shall file an answer brief which also may be accompanied by appropriate supporting documents. . . .
>
> (b) Failure to File Briefs. Failure to file briefs may subject the motion to summary ruling. The moving party's failure to file a brief shall be deemed an admission that the motion is without merit. ***Failure to file an answer brief by the opposing party within the time allowed shall be deemed an admission that the motion is well taken.*** Reply briefs by movant are optional, and failure to file will not subject a motion to summary ruling.

. . .

> (d) When Motion Deemed Submitted. Unless oral argument is ordered, or ***unless the time is enlarged by the court***, the motion is deemed submitted at the expiration of any of the applicable time limits set forth above without supporting briefs having been filed. . . .

(Emphasis added.)

¶8 Although a district court is not required to grant an unanswered motion, M. Unif. Dist. Ct. R. 2(b); *State v. Loh*, 275 Mont. 460, 466–67, 914 P.2d 592, 596 (1996); *State v. Pizzola*, 283 Mont. 522, 525, 942 P.2d 709, 711 (1997), a party who fails to respond within the applicable time limits risks summary ruling on the motion, M. Unif. Dist. Ct. R. 2(b); *Chapman*, ¶ 9. A district court may enlarge the time allowed for a motion to be deemed submitted and consider responsive pleadings past applicable filing deadlines. M. Unif. Dist. Ct. R. 2(d); *In re Marriage of Chase*, 237 Mont. at 229, 772 P.2d at 1268 ("[w]hile the [District] [C]ourt did not specifically enlarge the time by order, it accepted the briefs on the part of both parties without regard to the time constraints of Rule 2(b). In the absence of any showing by the record that the District Court committed an abuse of discretion, we will not overturn the decision of the lower court. . . .").

¶9 Although parties should adhere to filing deadlines established by applicable rules, if an opposing party is not prejudiced by an untimely response, we caution against summarily dismissing a case solely based on a failure to meet deadlines. *See Bates v. Anderson*, 2014 MT 7, ¶ 23, 373 Mont. 252, 316 P.3d 857 (analyzing a motion to withdraw or amend deemed admissions under M. R. Civ. P. 36). Public policy, and this Court, generally favor resolution of a case on its merits, as opposed to dismissal via a dispositive

motion or procedural technicality. *See ECI Credit v. Diamond S Inc.*, 2018 MT 183, ¶ 32, 392 Mont. 178, 422 P.3d 691 (analyzing dismissal in the context of a motion to dismiss); *McCain v. Batson*, 233 Mont. 288, 299, 760 P.2d 725, 731–32 (1988) (analyzing dismissal in the context of a summary judgment motion).

¶10 In this case, the District Court determined the State's seventeen-day delay in filing a response caused minimal prejudice to Chesterfield. The District Court therefore considered the merits of the State's response, in conjunction with Chesterfield's Motion to Dismiss, and concluded that Chesterfield failed to meet his burden to overcome the presumption of regularity of his prior DUI conviction.

¶11 Chesterfield argues that the District Court abused its discretion by considering the counterarguments offered by the State in its untimely response. Chesterfield argues the State, by failing to respond within the time allotted, admitted that Chesterfield's Motion was well taken. We disagree.

¶12 The District Court did not abuse its discretion when it considered the merits of the State's late response and correctly concluded that Chesterfield was not prejudiced by the seventeen-day delay in the State's filing. *See Bates*, ¶ 23. Although the District Court did not explicitly order the timeframe for consideration of the State's response "enlarged" under M. Unif. Dist. Ct. R. 2(d), the District Court implicitly enlarged the timeframe when it considered the merits of the State's response. *See In re Marriage of Chase*, 237 Mont. At 229, 772 P.2d at 1268. The District Court properly exercised its authority and discretion to resolve the case on the merits. *See* M. Unif. Dist. Ct. R. 2(d). We therefore turn to the merits of Chesterfield's Motion to Dismiss.

¶13 The Montana Constitution "protects a defendant from being sentenced based upon misinformation." *State v. Chaussee*, 2011 MT 203, ¶ 9, 361 Mont. 433, 259 P.3d 783; Mont. Const. art. II, § 17; *see also* U. S. Const. amend. VI. Accordingly, a constitutionally infirm prior conviction cannot be used for sentencing enhancement purposes, such as in a felony DUI case. *State v. Hass*, 2011 MT 296, ¶ 14, 363 Mont. 8, 265 P.3d 1221 (citing Mont. Const. art. II, § 17); *Maine*, ¶ 28; *State v. Mann*, 2006 MT 33, ¶ 15, 331 Mont. 137, 130 P.3d 164. We employ a three-step framework for evaluating collateral challenges to prior convictions offered for sentence enhancement purposes:

> (1) a rebuttable presumption of regularity attaches to the prior conviction, and we presume that the convicting court complied with the law in all respects;
>
> (2) the defendant has the burden to overcome the presumption of regularity by producing affirmative evidence and persuading the court, by a preponderance of the evidence, that the prior conviction is constitutionally infirm; and
>
> (3) once the defendant has done so, the State has the burden to rebut the defendant's evidence. There is no burden of proof imposed on the State to show that the prior conviction is valid, however. The State's burden, rather, is only to rebut the defendant's showing of invalidity.

State v. Nixon, 2012 MT 316, ¶ 15, 367 Mont. 495, 291 P.3d 1154 (citing *Hass*, ¶ 15); *Mann*, ¶ 15.

¶14 To overcome the presumption of regularity, a defendant has the burden of presenting evidence *and* the burden of persuasion to prove "by a preponderance of the evidence that the conviction is invalid." *Nixon*, ¶ 19 (citing *Maine*, ¶ 34). An ambiguous or silent record from the convicting court or a defendant's "sketchy recollection" as to whether he was advised of and waived his right to counsel are wholly insufficient to rebut the presumption

of regularity. *Chaussee*, ¶¶ 17, 24; *State v. Howard*, 2002 MT 276, ¶ 13, 312 Mont. 359, 59 P.3d 1075. A defendant must present affirmative evidence, either circumstantial or direct, such as "'unequivocal and sworn statements'" that he did not waive his right to counsel. *Nixon*, ¶ 18 (citing *Howard*, ¶ 13); *Chaussee*, ¶ 24 (holding the absence of any evidence the defendant was advised of his right to counsel and made a full knowing waiver of that right is *not* affirmative evidence that the defendant was not advised of this right to counsel and did not knowingly waive it).

¶15 Chesterfield argues the evidence he submitted with his Motion was effectively unchallenged and established, by a preponderance of the evidence, that his 2005 conviction was invalid. Thus, he argues, the District Court erred in denying his Motion to Dismiss the felony DUI charge. We disagree.

¶16 Chesterfield fails to overcome the presumption of regularity that attached to his 2005 DUI conviction. In his Motion to Dismiss, Chesterfield stated he did not remember being advised of his right to an attorney and he did not remember waiving his right to an attorney. He further stated, "there is no record that [Chesterfield] was informed of, or waived his right to counsel." Chesterfield posits the State has the burden of proving a negative. Quite the opposite: Chesterfield must affirmatively prove, by a preponderance of the evidence, that his 2005 conviction is constitutionally infirm. *See Nixon*, ¶¶ 15, 18–19, 21. Only then would the burden shift to the State to rebut the showing of invalidity. *See Nixon*, ¶ 15; *Hass*, ¶ 15. The absence of anything in the Gallatin County Justice Court records—which Chesterfield attested he looked through but then failed to enter into the record—does not affirmatively prove Chesterfield was not advised of his rights.

See Nixon, ¶¶ 18–20; *Chaussee*, ¶ 24. Chesterfield's sketchy recollection as to whether he was advised of and waived his right to counsel is insufficient to rebut the presumption of regularity that attached to his 2005 DUI conviction. *See Chaussee*, ¶¶ 17, 24; *Howard*, ¶ 13. The District Court did not err in denying Chesterfield's Motion to Dismiss and in determining the 2005 DUI conviction could be used for sentencing enhancement purposes. *See Maine*, ¶ 12.

¶17 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. We affirm.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ MIKE McGRATH
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE