

DA 18-0707

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 224N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

WAYNE A. HUSSAR II,

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. DDC-2017-167  
Honorable James P. Reynolds, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Wayne A. Hussar, II, Self-represented, Glendive, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Michael P. Dougherty,  
Assistant Attorney General, Helena, Montana

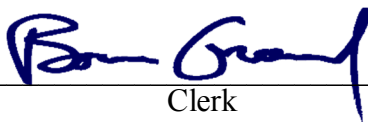
Leo J. Gallagher, Lewis and Clark County Attorney, Helena, Montana

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Submitted on Briefs: August 28, 2019

Decided: September 17, 2019

Filed:

  
Clerk

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Justice Jim Rice 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 Wayne A. Hussar II (Hussar) has filed an appeal, purportedly from the order entered by the First Judicial District Court, Lewis and Clark County, on December 12, 2018, which addressed numerous pleadings filed by Hussar in five different causes before that court.<sup>1</sup> The content of Hussar's appellate arguments concern his convictions by guilty plea of felony assault on a peace officer or judicial officer, and of misdemeanor partner or family member assault in District Court Cause No. DDC-2017-167. Our review is limited to this matter, wherein judgment was entered on January 29, 2018. Several pleadings filed by Hussar in the District Court arguably addressed these convictions, including a motion to withdraw his plea denied by the court on October 19, 2018, and, as described by the District Court, a "claimed petition for post-conviction relief" that the court summarily denied as

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<sup>1</sup> The District Court noted that Hussar's filings "are often duplicative, often incomprehensible, sometimes misfiled and mostly do not comply with the rules of civil procedure or the rules of criminal procedure. The deputy clerk of this court has now sent Hussar 24 letters in which she has returned misfiled or 'unfileable' papers. This obviously creates a needless strain on the limited resources of that office."

failing to comply with statutory requirements governing such petitions, within its order of December 12, 2018.

¶3 As the State notes, it appears from Hussar’s arguments that he is actually attempting to challenge his January 2018 judgment of convictions in the guise of appealing the District Court’s December 2018 order. In August 2018, we denied Hussar’s petition for an out-of-time appeal of his January 2018 convictions, reasoning his pursuit of sentence review while represented by counsel and the lack of any explanation for the delay in filing an appeal had failed to demonstrate extraordinary circumstances required by M. R. App. P. 4(6).

¶4 Even if we could construe Hussar’s pleadings as a timely appeal from the denial of a motion to withdraw his plea and dismissal of a postconviction proceeding, a basis for relief has not been established. After entering a plea agreement but prior to the scheduled change of plea hearing in October 2017, Hussar wrote a personal letter to the presiding judge asking to “withdraw” his plea because he had been misinformed by his counsel about the terms of the agreement. The District Court granted additional time for Hussar to decide whether to enter a plea or proceed to trial, after which Hussar’s counsel filed a second motion to vacate the trial and set another change of plea hearing. Hussar signed an acknowledge of waiver of rights and entered a guilty plea to the revised charges, one of which had been reduced to a misdemeanor, and Hussar was sentenced in January 2018. Hussar has not established good cause for withdrawal of his pleas. Section 46-16-105(2), MCA. Further, Hussar makes no attempt to establish that the District Court’s dismissal of

his petition for postconviction relief for failing to satisfy basic statutory pleading requirements was error. *Ellenburg v. Chase*, 2004 MT 66, ¶ 12, 320 Mont. 315, 87 P.3d 473 (“[u]nlike civil complaints, the postconviction statutes are demanding in their pleading requirements.”).

¶5 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, and the District Court’s application of the law was correct.

¶6 Affirmed.

/S/ JIM RICE

We concur:

/S/ LAURIE McKINNON  
/S/ INGRID GUSTAFSON  
/S/ BETH BAKER  
/S/ DIRK M. SANDEFUR