No. 04-617

IN THE SUPREME COURT OF THE STATE OF MONTANA

2005 MT 205N

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STATE OF MONTANA,

Plaintiff and Respondent,

v.

ALLISON CHAPMAN,

Defendant and Appellant.

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APPEAL FROM: District Court of the Twelfth Judicial District,
In and For the County of Chouteau, Cause No. DC 2002-06
Honorable David B. Rice, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Allison Chapman, Geraldine, Montana, *Pro Se*

For Respondent:

Hon. Mike McGrath, Attorney General; Jim Wheelis, Assistant Attorney General, Helena, Montana

Stephen A. Gannon, Chouteau County Attorney, Fort Benton, Montana

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Submitted on Briefs: July 12, 2005

Decided: August 23, 2005

Filed:

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Clerk

Chief Justice Karla M. Gray delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d)(v), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum decision shall not be cited as precedent. Its case title, Supreme Court cause number and disposition shall be included in this Court's quarterly list of nonciteable cases published in the Pacific Reporter and Montana Reports.

¶2 The Twelfth Judicial District Court, Chouteau County, denied Allison Chapman's motion to stay execution of payment of fines and fees imposed in the judgment entered in this matter. We affirm.

¶3 The issue is whether the District Court abused its discretion in refusing to grant the stay requested by Chapman.

¶4 The District Court entered judgment of conviction against Chapman in this case on December 3, 2002, and we affirmed that judgment on appeal on January 13, 2004. The judgment requires Chapman to make monthly payments on $621.55 in fines, fees and jury expenses. On March 4, 2004, Chapman moved the District Court to stay execution of payment for six months, pending the anticipated filings of an appeal to the United States Supreme Court and a 42 U.S.C. § 1983 action in federal district court. On July 21, 2004, the District Court denied the motion for a stay, stating it was not well-taken because Chapman had provided no evidence of having made any filings for relief in federal court.

¶5 The State of Montana speculates that the denial of the stay may not be an appealable order, and Chapman fails to provide any support for the appealability of the District Court

order. We observe, however, that § 46-20-104(1), MCA, provides that an appeal may be taken by the defendant in a criminal case from "orders after judgment which affect the substantial rights of the defendant." For purposes of this case, we observe that the denial of a motion for a stay of execution of sentence may affect a defendant's substantial rights and, therefore, we address Chapman's appeal in this case.

¶6 We have determined to decide this case pursuant to Section 1, Paragraph 3(d) of our 1996 Internal Operating Rules, as amended in 2003, which provides for memorandum opinions. Rule 23(a)(4), M.R.App.P., requires that the argument portion of a brief must contain the appellant's contentions with citations to the authorities relied upon. Chapman advances no authority whatsoever for the assertion of error by the District Court, as required by Rule 23(a)(4). As a result, Chapman has not met the appellant's burden of establishing error. *See, e.g., City of Billings v. Peterson*, 2004 MT 232, ¶ 36, 322 Mont. 444, ¶ 36, 97 P.3d 532, ¶ 36 (citation omitted).

¶7 Affirmed.

/S/ KARLA M. GRAY

We concur:

/S/ BRIAN MORRIS
/S/ PATRICIA O. COTTER
/S/ JIM RICE