

May 22, 2017

Montana Public Defender Advisory Commission

c/o Cathy Doyle

Central Services Administration

Office of State Public Defender

44 West Park

Butte, MT 59701

RE: Director, Montana Office of Public Defender

To Whom It May Concern:

Pursuant to the notice that this Commission was seeking candidates for the position of the newly created Director position, I am submitting this cover letter; resume; and, writing sample. They are each being emailed separately.

I'm applying for this position because, for approximately 35 plus years, I have been a Public Defender. As such, I first worked as a Public Defender, while in private practice, on an hourly contract, with the First Judicial District, covering Lewis and Clark and Broadwater Counties. Thereafter, I, along with two other attorneys, became a yearly contract Public Defender, in that district. Due to my homicide experience, during this time, I began handling homicide cases, with co-counsel, in other districts, in western Montana. In 1991, because of my experience, trying homicide cases, I began doing death penalty cases. From 1991, until this past year, I was qualified to handle such cases, under the Standards for Appointed Counsel, in Capital Case. I'm no longer qualified as I have not had the required Continuing Legal Education Credits, having last received the same in 2011.

As a Public Defender, prior to the creation of OPD, I handled every type of criminal case, in both state & federal court. When OPD was established, I was appointed by former Chief Public Defender, Randi Hood, to be the Regional Defender in Region 2, which consisted of the Missoula office; the Hamilton office; and, contract defenders in Mineral County, until a half-time defender, for Region 1 and Region2, was hired. He was then supervised by me and the Regional Defender in Region 1. As a Regional Defender, I supervised the largest number of attorneys; staff; and, investigators of any region. At the same, I was involved, in training new lawyers, and handling conflict, or homicide cases, in several regions. I also had a limited caseload, in Missoula and Hamilton.

In 2010, due to my trial experience, Ms. Hood asked me to join OPD's Major Crime Unit. I immediately began trying homicide cases, even multiple homicide cases, across Montana. In September of 2011, I decided to become a candidate for an open seat on the Montana Supreme Court. Because of that, I could no longer handle a full caseload and, ultimately, went to half-time employment, in the summer of

2012. During this time, I assisted in the Training Office, under the supervision of Eric Olson. In working with Eric, I helped write the training manuals, Courts of Limited Jurisdiction Practice Manual and the Criminal Practice Manual, which are on the OPD website. I also handle all the OPD clients Sentence Review cases, at both the Montana State Prison and the Montana Women's Prison. In doing Sentence Review, I had two legal interns, from the law school, who helped me with the men's cases and I supervised them in handling misdemeanor cases in the lower courts.

In October of 2014, I went back to full-time work as an Assistant Public Defender, in Region 5, in Butte. In this position, I have handle all types of cases, in the five-county region. In this position, I spend a lot of time mentoring the newer attorneys in the office. In addition, as I have done in my 10 plus years with OPD, I mentor and provide advice to defense attorneys across the state. This is also something I did while in private practice.

Based on my experience, I believe I would satisfy the qualifications this Commission has identified for this position. I have been and always will provide excellent public defender services. I'm fully aware of the issues facing this agency and am highly respected amongst judges, prosecutors and other criminal defense attorneys. I have represented organizations, in lobbying efforts, at the legislature. I also, in 2007 and 2009, assisted Ms. Hood, in the many hearings, on the OPD budget, when she was not available. I think I have great skills in writing; public speaking and presentation. Many of the current staff, in the Central Office, know me and respect me. I believe I am very good in public relations and can communicate the important work of Public Defenders through the media; the public; and, more importantly to the legislature. I understand management of this large organization and would do it with transparency and fiscal responsibility. As for finding ways to offer quality public defender services under budget constraints, I believe I know how to do that and can do it.

I would appreciate being considered for this Director position and would hope this Commission would decide to submit my name to the Director of the Department of Administration as a person to become the new Director of this agency.

Respectfully submitted,

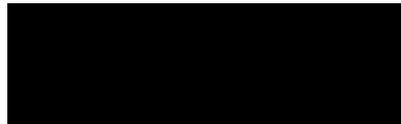
Ed Sheehy

**Resume
for
Ed Sheehy**

Work Address

Office of State Public Defender
66 West Park, Ste 203
Butte, Montana 59701
Phone: 406-496-6680

Home Address



Email addresses: home: esheehy1@msn.com work: esheehy@mt.gov

Education

B.A. Political Science, Carroll College, Helena, Montana, 1974, Cum Laude
J.D., Gonzaga School of Law, Spokane, Washington, 1978, Cum Laude

Work Experience

10/2014 to present:

Assistant Public Defender

Butte Public Defender Office

Major Duties:

Handling all assigned criminal cases, both felonies and misdemeanors, in 5 county region

Handling assigned DN cases in 5 county region

Handling assigned DJ cases in 5 county region

Handling assigned DI cases in 5 county region

Handling any other cases assigned

Mentoring the younger attorneys in Butte; Anaconda; and, Dillon offices

10/2011 to 10/14:

Assistant Public Defender

Central Office, Montana Office of State Public Defender, stationed in Missoula

Major duties:

- Handled all sentence review cases

- Involved in training full time public defenders and contract public defenders

- Handled felony and misdemeanor cases, in Missoula, when the Missoula office caseloads are too high

- Supervised legal interns from the University of Montana Law School

10/2010 to 10/2011:

Assistant Public Defender

Major Crimes Unit, Montana Office of State Public Defender, stationed in Missoula

Major duties:

- Tried homicide cases across the state

5/2006 to 10/2010:

Regional Deputy Public Defender

Region 2, Montana Office of State Public Defender, stationed in Missoula

Major duties:

- Managed the Missoula and Hamilton Offices

- Supervised approximately 40 attorneys, legal assistants, and investigators

- Handled conflict cases in all the Regions across the state

- Handled trials and appeals of several cases in Region 2

1/1979 to 6/30/2006:

Partner, Law Firm of Cannon and Sheehy

Offices in Helena, Browning, and Missoula

Major duties:

- General practice of law including domestic work, probates, and class actions

- Contract public defender and private criminal defense in federal, state, and tribal courts

- Handled cases in front of the Commission on Practice

- Tried civil and criminal cases in almost every judicial district in Montana

- Appeals of civil and criminal cases in State and Federal Courts

Lobbied the Montana Legislature
Managed staff in the Helena Office

10/1984 to 7/1/2006

CJA Panel Attorney, U.S. District Court of Montana

Major Duties:

Handled criminal cases and tried jury trials in all 3 Divisions of the Court.
Handled appeals to the 9th Circuit Court.
Applied for Petitions for Certiorari to the U.S. Supreme Court.

10/1982 to 9/1990

Public Defender

Lewis and Clark County, Helena, Montana

Major Duties:

Part time Public Defender Lewis and Clark County
Handled homicide cases in several surrounding counties, 1986 until 7/1/2006
Handled Death Penalty Cases across Montana, 1991 until 12/8/05

1/1978 to 12/31/78

Law Clerk, Montana Supreme Court

for former Chief Justice and Associate Justice Frank Haswell

Income: \$13,000 and earned 10 credits to graduate from Gonzaga Law School

5/1977 to 12/1977:

Legal Intern, University Legal Assistance, Gonzaga School of Law

Spokane, Washington

Major duties:

Handled civil and criminal misdemeanors for indigent persons
Income: None

Bar Admissions

Montana Supreme Court, June 5, 1978

United States District Court of Montana, May 14, 1980

Ninth Circuit Court of Appeals, May 22, 1987
United States Supreme Court, May 23, 1983
United States Claims Court, August 6, 1985
Court of Appeals for Federal Circuit, June 7, 1986
United States Tax Court, May 17, 1984

Awards

September 2007: received the George L. Bousliman Professionalism Award by the State of Montana for establishing a reputation and tradition of professionalism in the practice of law.

MEMBERSHIPS

National Association of Criminal Defense Lawyers

Montana Association of Criminal Defense Lawyers

No. DA-08-0120

STATE OF MONTANA,

Plaintiff and Respondent,

v.

KEALY V. BESKOON

Defendant and Appellant.

FILED

MAY 15 2008

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

BRIEF OF APPELLANT

On Appeal from the Montana Fourth Judicial District Court,
Missoula County, The Honorable Ed McLean, Presiding

APPEARANCES:

EDMUND F. SHEEHY, JR.
Regional Deputy Public Defender
Region 2
610 Woody St.
Missoula, MT 59802

MIKE McGRATH
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

ATTORNEYS FOR DEFENDANT
AND APPELLANT

FRED VAN VALKENBURG
Missoula County Attorney
Missoula County Courthouse
Missoula, MT 59802

ATTORNEYS FOR PLAINTIFF
AND RESPONDENT

STATE LAW LIBRARY

MAY 16 2008

OF MONTANA

TABLE OF CONTENTS

TABLE OF AUTHORITIES II

ISSUE FOR REVIEW 1

STATEMENT OF THE CASE AND FACTS..... 1

SUMMARY OF ARGUMENT.....3

ARGUMENT4

CONCLUSION.....8

CERTIFICATE OF SERVICE 9

CERTIFICATE OF COMPLIANCE 10

TABLE OF AUTHORITIES

CASES

<u>City of Billings v. Smith</u> , (1997), 218 Mont. 133, 932 P.2d 1058.....	6,7
<u>State v. Brotherton</u> , 2008 MT 119, 342 Mont. 511, ___ P.3d ___	4
<u>State v. Hatfield</u> , (1993), 256 Mont. 346, 846 P.2d 1025	5, 7
<u>State v. Hicks</u> , 2006 MT 71, 331 Mont. 471, 133 P.3d 206.....	4
<u>State v. Morales</u> , (1997), 284 Mont. 237, 943 P.2d 1289.....	6, 7
<u>State v. Stephenson</u> , 2008 MT 64, 342 Mont. 60, ___ P.3d ___	4, 5, 7

STATUTES

§ 46-8-113.....	3, 5
§ 46-17-311(1).....	6
§ 61-8-302.....	1, 4, 5
§ 61-8-711.....	5,6,8
§ 61-8-716.....	5,6

ISSUE FOR REVIEW

The defendant, Kealy V. Beskoon (Mr. Beskoon), appeals to this Court from the district court's judgment imposing sentence. The issue on appeal is:

1. Whether the district court imposed an illegal sentence when it imposed
 - A. \$150.00 in Public Defender Fees;
 - B. \$426.96 for costs of the jury trial in Justice Court and \$80.00 for reimbursement of the Montana Highway patrol for officer overtime to testify in Justice Court; and
 - C. \$50.00 in cost of prosecution fees.

STATEMENT OF THE CASE AND FACTS

On June 4, 2007, Officer Chad Denver issued a ticket to Kealy V. Beskoon, charging him with Careless Driving pursuant to § 61-8-302, MCA. (See Ticket.) Mr. Beskoon exercised his constitutional right to a jury trial. A trial was held in Justice Court on November 5, 2007. The jury convicted Kealy of careless driving. Judge Karen Orzech imposed a fine of \$100 – all but \$50 suspended. Judge Orzech also imposed the following conditions: Mr. Beskoon pay a surcharge of \$35, pay \$50 for the cost of prosecution, take a driver education course, pay \$426.96 for the cost of Jury, and pay \$80.00 for officer overtime. (Transcript of Proceeding, P. 8.)

On the same day, Mr. Beskoon filed a notice of appeal to the Fourth Judicial District Court of the State of Montana. (Notice of Appeal.) The District Court held a hearing on the case on December 5, 2007. At the hearing, Kealy pled guilty to the charge of careless driving and requested that the court review his sentence. (Trans. Pp. 6, 8, 10.) The district court then orally imposed judgment, a fine of \$100 dollars – all but \$50.00 suspended. (Trans. p. 11.) The district court also orally imposed the following conditions:

In addition, you'll pay a thirty-five dollar surcharge.

2) You'll pay a fifty dollar cost of prosecution;

3) You'll pay a four hundred, and twenty-six dollars, and ninety-six cents cost of jury...

You'll reimburse the Justice Court thirty dollars for the costs of officer overtime.

You'll take a driver improvement course within two months

And, you'll make – you'll pay a hundred and fifty dollars cost of Public Defender.

(Transp. 12.)

The Judgment, signed and filed on February 19, 2008, declared Mr. Beskoon guilty of Careless Driving in violation of § 31-8-302, MCA. The Judgment decreed Mr. Beskoon be fined \$100.00 with \$50.00 suspended on the “terms and conditions” that he reimburse the State of Montana for his court appointed counsel in the amount of \$150.00; that he pay a \$50.00 cost of prosecution; that he pay a \$10.00 “technology fee;” that he pay a \$10.00 “Law Enforcement Academy Surcharge;” that he pay a \$15.00 “County Attorney” surcharge; that he pay

\$426.96 for the costs of the jury trial in Justice Court; and finally, that he reimburse the Montana Highway patrol in the amount of \$80.00. (See Judgment.)

On April, 9 2008, the district court issued an Order Amending the Judgment to read “The Defendant shall pay Public Defender fees in the amount of \$150.00 in accordance with M.C.A. 46-8-113.” (Order Amending Judgment p. 1.) Additionally the Order Amending the Judgment required that the public defender fees be paid to the Office of Public Defender and that the officer reimbursement be paid directly to the officer. (Order Amending Judgment p. 1).

This appeal followed.

SUMMARY OF ARGUMENT

The district court’s imposition of conditions requiring Mr. Beskoon to pay public defender fees, costs associated with the Justice Court and cost of prosecution, is illegal. No statutory authority exists that would allow a district court to impose public defender fees upon a person convicted of Careless Driving. Additionally, district courts are prohibited by statute and case law, from imposing costs of proceedings in Justice Court. Finally, no statutory authority exists that would allow a district court to impose costs of prosecution in this case. Because the sentence is illegal, this Court should reverse the district court’s sentence.

Standard of Review

The Montana Supreme Court reviews challenges to the legality and/or propriety of sentencing conditions, first for legality. *State v. Brotherton*, 2008 MT 119 ¶ 10, 342 Mont. 511 ¶ 10, ___ P.3d ___ ¶ 10. Review of the legality of a sentence is a question of law and is reviewed *de novo*. *Id.*

ARGUMENT

I. The sentence imposed by the district court is illegal.

A sentencing condition is illegal if the sentencing court lacked statutory authority to impose it, if the condition falls outside the parameters set by the applicable sentencing statutes, or if the court did not adhere to the affirmative mandates of the applicable sentencing statutes. *Brotherton*, ¶ 10. A sentencing court's authority to impose a criminal sentence derives from the law; it is not inherent. *Brotherton*, ¶ 11; citing *State v. Hicks*, 2006 MT 71 ¶ 41, 331 Mont. 471 ¶ 41, 133 P.3d 206 ¶ 41.

The district court did not have statutory to impose Mr. Beskoon's sentence. A sentence is legal only if it is authorized by applicable sentencing statutes and imposed by the court pursuant to those statutes. *State v. Stephenson*, 2008 MT 64 ¶¶ 15, 22, 342 Mont. 60 ¶¶ 15, 22, ___ P.3d ___, ¶¶ 15, 22.

The statutory authority for a sentencing court to sentence a defendant convicted of careless driving is set forth below. Section 61-8-302, MCA penalizes Careless Driving as such:

A person who is convicted of the offense of careless driving is subject to the penalties provided in 61-8-711 or 61-8-716.

Accordingly, § 61-8-716, MCA leads the court to § 61-8-711, MCA, stating:

Careless driving, penalty (1) a person who violates the provisions of 61-8-302 is guilty of the offense of careless driving and except as provided in subsection (2) is punishable as provided in 61-8-711.

Finally, § 61-8-711, MCA, in pertinent part provides:

It is a misdemeanor for a person to violate any of the provisions of this chapter unless the violation is declared to be a felony.

2) Each person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction be punished by a fine of not less than \$10 or more than \$100....

5) Upon conviction, the court costs or any part of the court costs may be assessed against the defendant in the discretion of the court.

A. The district court's imposition of the condition that Mr. Beskoon pay public defender fees is illegal and should be reversed because the district court lacked statutory authority to impose such a condition.

The imposition of public defender fees in this case is illegal. A sentencing court has no power to impose a sentence in the absence of specific statutory authority. *Stephenson*, ¶ 22; citing *State v. Hatfield* (1993), 256 Mont. 346, 346, 846 P.2d 1025, 1029.

Here, the district court did not have specific authority to impose the public defender fees. In its amended judgment, the district court cited § 46-8-113 for its authority to impose public defender fees. Section 46-8-113, MCA gives the court the authority to impose public defender fees only in particular cases:

As part of or as a condition under a sentence imposed under the provisions of this title, the court may require a convicted defendant to pay the costs of counsel assigned to represent the defendant.

The above statute specifically states that the sentence must be imposed under the provisions of Title 46 of the Montana Code. However, in the instant case, the district court only had the statutory authority to sentence Mr. Beskoon under §§ 61-8-711 or 61-8-716, MCA, which are under Title 61. No similar provision allowing imposition of public defender fees in a Careless Driving case exists. Therefore, because the statutory authority cited by the district court in its Order Amending Judgment does not actually apply to situations where the court only has authority to sentence under Title 61, the court did not have statutory authority to impose a condition of payment of public defender fees.

B. The district court's imposition of Justice Court jury fees and officer overtime is illegal and should be reversed because the district court lacked statutory authority to impose the condition.

The district court did not have statutory authority to impose justice court costs. Pursuant to § 46-17-311(1), "all cases on appeal from a justice's or city court must be tried anew in the district court...." Furthermore, "once a trial is

started anew in the district court, any costs taxed to a defendant as a part of a judgment and sentence imposed by a justice court are erased.” *State v. Morales* (1997), 284 Mont. 237, 242, 943 P.2d 1289, 1289. In reaffirming its ruling in *City of Billings v. Smith* (1997), 281 Mont. 133, 932 P.2d 1058, the Court in *Morales* held that after Morales appealed from the justice court to the district court, the district court abused its discretion when it ordered Morales to pay Justice Court jury costs. *Morales*, 284 Mont. at 242, 943 P.2d at 1289. In *Smith*, this Court stated that the imposition of costs associated with justice court proceedings was an improper exercise of the district court’s authority and must be reversed. *Smith*, 281 Mont at 141, 932 P.2d at 1063.

Here, the district court imposed an illegal sentence when it sentenced Mr. Beskoon to pay as a condition, “the costs of his jury trial in Justice Court...[and t]hat the Defendant shall reimburse the Montana Highway Patrol in the amount of \$80.00 for the cost of officer overtime to testify in the Justice Court trial in this case.” (See Judgment.) Because both of these conditions are costs of the Justice Court and not the district court, the district court, like in *Morales* and *Smith*, improperly exercised its authority in imposing the conditions and the sentence must be reversed.

- C. The district court’s imposition of prosecution costs is illegal and should be reversed because the district court lacked statutory authority to impose the condition.**

The district court did not have statutory authority to impose the prosecution costs. To reiterate the well-established rule, a sentencing court has no power to impose a sentence in the absence of specific statutory authority. *State v. Stephenson*, ¶ 22; citing *State v. Hatfield* (1993), 256 Mont. 346, 346, 846 P.2d 1025, 1029.

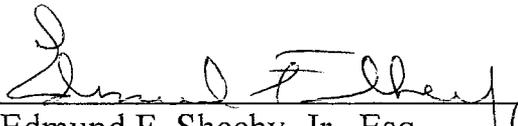
Here, the district court does not cite any authority by which it can impose the costs of prosecution. The statute upon which the district court has the authority to impose sentence, § 61-8-711, MCA, provides the district court with authority to charge a defendant convicted of Careless Driving with court costs, but no where does it say that a district court may charge for the cost of prosecution. The district court exceeded its authority in charging Mr. Beskoon and the sentence should be reversed.

CONCLUSION

Because the district court did not have statutory authority to impose the public defender fees, the costs stemming from Justice Court proceedings, and the cost of prosecution, the sentence is illegal. Because the sentence is illegal, it should be reversed.

Dated this 14th day of May, 2008.

RESPECTFULLY SUBMITTED:


Edmund F. Sheehy, Jr., Esq.
Regional Deputy Public Defender

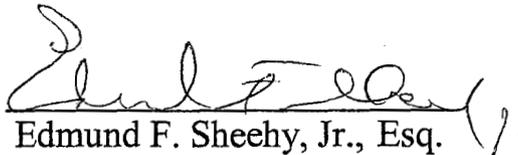
CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Brief
of Appellant to be mailed to:

MIKE McGRATH
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

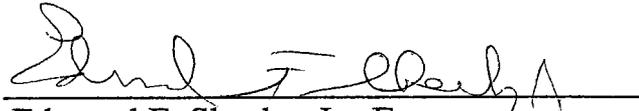
FRED VAN VALKENBURG
Missoula County Attorney
Missoula County Courthouse
Missoula, MT 59802

DATED: May 14, 2008


Edmund F. Sheehy, Jr., Esq.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.


Edmund F. Sheehy, Jr., Esq.