

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA23-0063

STATE OF MONTANA,

Plaintiff and Appellant,

v.

SKYLER L. GRIEBEL,

Defendant and Appellee.

PETITION FOR REHEARING

On Appeal from the Montana Sixth Judicial District Court, Park County

Cause No. DC22-33

The Honorable Ray J. Dayton, presiding.

APPEARANCES:

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BACKGROUND

Skyler Griebel was arrested on February 8, 2022, for the deliberate homicide for the death of Tyler Netto. Bond was set at \$1.5 million. CR10. The State filed in district court on March 10, 2022, and Dave Marchant and Fred Snodgrass were appointed. On May 16, Griebel filed a letter asserting his Constitutional right to effective counsel. CR16. His case was reassigned to Jami Rebsom and Kirsten Mull Core, and discovery requests resubmitted June 14. CR20. That day, the court set the case for trial on October 24, 2022. CR21.

Motions for bond reduction and to dismiss were filed on July 15, 2022. CR25. A hearing was set for August 24. CR28. Prior to that hearing, Griebel moved to compel discovery, including Netto's cell phone data. CR31. At that time, 4 of 32 sets of discovery had been provided. CR317:EX.C. The court reduced bond to \$800,000 and set deadlines for additional briefing. CR39, 40. The court later set the hearing on the motion to dismiss for September 27. CR45.

At the jury verification hearing on September 12, 2022, Griebel informed the court that a motion to compel and to dismiss were pending, so he could not verify the trial. CR49. The court reset the trial to December 12, or alternatively January 9. CR51. On September 27, the State informed the court that it was not available for either setting and requested a scheduling hearing.¹ CR55. The next day, the court set a hearing for October 7. The motion to dismiss (including arguments made

¹ The Order incorrectly stated the State requested a continuance on October 11, 2022.

pursuant to *Franks v. Delaware*), was reset to December 7, and the trial set to January 9, (the State was not available), or March 27, 2023. CR57, 61.

On October 18, Griebel filed a motion to dismiss based on the State's failure to provide exculpatory evidence (Netto's and Overgaauw's cell phones). On October 31, the court granted Griebel's motion to compel. CR71.

In November 2022, Mr. Griebel became aware that Judge Gilbert had a conflict and informed the court, who declined to recuse. Griebel filed a motion to recuse, on November 7. Judge Gilbert recused herself and vacated the December 7 hearing. Judge Dayton did not assume jurisdiction until December 5. CR73, 78, 88.

On November 28, Griebel filed a motion for contempt, to dismiss and to suppress. CR71, 83. On December 15, Griebel requested a scheduling conference due to the lack of a hearing date. That day, the court vacated the January trial² set a hearing for February 8, set scheduling for the March 27 trial, and later set a hearing on Griebel's bond motion. CR65, 92, 93. On January 13, the State moved to vacate the *Franks* hearing (set with the other motions in February). See CR66, 83, 85. The court held a bond hearing on December 29. At that hearing, the court discussed discovery issues, but did not rule, and denied the bond reduction.

At the motions hearing on February 8, arguments regarding holding a *Franks* hearing, discovery issues, and brief discussion regarding Griebel's

² Without evidence, the Order stated the trial was vacated because of the courts schedule. CR92.

motion(s) to dismiss occurred. In response to the court asking what Griebel wanted, the following exchange occurred:

COURT: You know, is there any end?
REBSOM: There's no end to the uh, failure to comply with Discovery, no.
COURT: So, how do I rule on anything?
REBSOM: Dismiss it and suppress it all. This is insane. It's crazy.
COURT: Is it all in your briefs?
REBSOM: Uh, not the list of everything. I can make a list of everything.
COURT: Well, you know what uh, uh how do I wrap my arms around this? I mean uh, every day there's another brief. And then now...
REBSOM: Well, it's been...
COURT: you tell me it's not in your briefs because there's other stuff that you're unhappy with. When do I get my arms around it?
REBSOM: Because it's still continuing to go on by the State. This has been a disaster from the moment they arrested Skyler Griebel at 6:10 that morning and it keeps on a coming. And everything we do get ends up being exculpatory for us anyway.
COURT: Well, then you're, you're going to enjoy your trial.
REBSOM: No, I don't want there...
COURT: I'm just trying to get there.
REBSOM: to be a trial. I want the Court to uphold the Montana Constitution and my client's right to not be charged with something that doesn't have any iota or any probable cause that he ever committed a crime.
COURT: Well, when are you going to get it into a form that I can uh, rule on?
REBSOM: I can give you...
COURT: Is it all in your briefs, or isn't it?
REBSOM: There's a lot in the briefs, yes, and I can give you a Proposed Findings...
COURT: There's a lot in your briefs, does that answer my question? Is it all in your briefs? Is everything...
REBSOM: The law is.
COURT: you want me to consider in your brief?
REBSOM: The law is in the briefs Judge.
COURT: Okay. But you're saying that there's Discovery violations as a result of which I should dismiss the case.
REBSOM: Right.

COURT: Are all your complaints in the briefs?
REBSOM: Up to that point, but now there's even more is what I'm telling you. It keeps on coming. We keep finding out more things.
COURT: What, what can we, what can we accomplish 1 today?
REBSOM: I would like the case dismissed because the State is complete...

2.8.23 TR. P.24-25.

On February 15, the court vacated the *Franks* hearing. At the omnibus hearing on February 17, the court noted motions were pending. Both counsel affirmed that they were proceeding to trial. CR148. On February 23, Griebel filed a motion to dismiss on speedy trial grounds, and on March 1, Griebel filed another motion to compel. CR150. The court did not rule on Griebel's motions until March 8. See CR66, 83, 84, 85, 170, 171. With respect to the motion to compel and to dismiss, although denied, the order was clear that the State did not timely provide discovery. CR71, 170.

On March 13, Griebel requested a continuance. CR183. A status hearing occurred on March 14; the court continued the trial to September 11. The State had only provided 20 sets of the 32 sets of discovery prior to March 9, despite the trial date of March 27. On March 14, the court granted Griebel's motion to compel (with explanations), indicating that it was meritorious. CR194.

On July 7, Griebel filed a second motion to dismiss based on speedy trial. The court incorrectly stated that Griebel did not confirm the December trial, , did not acknowledge the court vacated the March setting based on discovery issues, and incorrectly stated that the motion to recuse was untimely. CR55, 249.

However, with respect to Griebel's responses to the delays, the court stated that "[t]he record shows that the Defendant made numerous responses to the delays that show a sincere desire to be brought to trial." The court denied that motion on July 25. On July 28, Griebel requested an expedited hearing on second motion, arguing that testimony and evidence needed to be presented. CR250. Thereafter, on August 8, Griebel filed a motion to dismiss and requested a *Franks* hearing (based on search warrants), and motions related to the State's failure to turn over police reports (and later unredacted reports). CR263, 268, 269. Following the hearing, on August 28, the court vacated the trial, without dates. CR315. Griebel expeditiously supplemented his briefing and requested that the State's responses be expedited, which was denied. CR319, 324, 326, 327. Griebel also requested a bail hearing and argued that by not resetting the trial, Griebel was suffering from extreme anxiety. CR329, 330, 339-342.

After the trial was vacated, the State took no action to have it reset or expedite briefing. In fact, the court gave the State an extension to which Griebel objected. CR328. On October 20, the court dismissed the case. CR334. The State did not file a notice of appeal until November 9. CR345.

ARGUMENT

This Court will consider a petition for rehearing only under limited circumstances:

- (i) The Court overlooked some fact material to the decision;

- (ii) The Court overlooked a question presented by counsel that would have proven decisive to the case;
- (iii) The Court's decision conflicts with a statute or controlling decision not addressed by the Court.

M. R. App. P. 20 and *State ex rel. Bullock v. Philip Morris, Inc.*, 2009 MT 261, 352 Mont. 30, 45, 217 P.3d 475. Griebel asserts that the Court overlooked facts and misapprehended facts, material to the Court's decision, resulting in an incorrect conclusion. This Court should reconsider its Order affirm the decision of the district court.

The court correctly attributed the first three periods to the State. The State asserted that the fourth period should be attributed to Griebel and argued (in part) that Griebel's motion to recuse Judge Gilbert was untimely. State: 18-21. This Court found Griebel's motion was timely, and meritorious given that Judge Gilbert recused herself, and it did not delay the March trial. Order:7-9. With respect to the fifth delay, this Court attributed the delay to the State but incorrectly determined that it was institutional because it could not determine when Griebel requested the ATF evidence, and found the court's conclusion that it was a lab issue was reasonable. Order:9. For consideration, Griebel requested discovery in March and June 2022. Griebel moved to compel crime lab, GSR and ballistics evidence on October 18, and filed a motion in *Limine* on January 13. CR66,103. The court ordered that the State provide the ATF and DNA reports, acknowledging that they were necessary for trial. As this Court stated, "[g]enerally, the State's failure to

secure evidence that causes a delay is deemed negligent and weighs heavily against the State.” Citing *State v. Johnson*, 2000 MT 180, ¶12, 300 Mont. 367, 4 P.3d 654. Finally, this Court correctly attributed the sixth period to the State but erroneously found that it was institutional, disregarding that the State made no effort to expedite its supplemental briefing, which was ordered on August 23, and which the court stated it wanted by the following Monday if the trial was to be held on September 11. TR(8.23.23):227. Griebel timely filed his brief on August 28. While the State followed the court’s briefing deadline, to which Griebel objected, it filed its briefing over a month later. CR333.CR319. Further, the State did not request the trial be reset, even through Griebel confirmed that he was ready for trial.

TR(8.23.23):228-229.

This Court focused on Griebel’s responses to the delays. Throughout the case, prior to trial settings, Griebel briefed discovery issues. Prior to the October setting, in August, Griebel filed a motion to compel which was granted after the trial was vacated. Other motions to dismiss were filed in June, October, November 2022, and February and March 2023, before the March trial date. After that trial was vacated, additional motions regarding discovery and to dismiss were filed in advance of the September trial, none of which requested a delay and were filed so that Griebel could prepare for trial.

Critical of Griebel’s motion practice, the Court stated that some motions were of dubious merit. Order:11. None of the motions filed delayed the trial

(except March). With respect to Griebel's discovery motions, even if the court did not find that the State was acting in bad faith, none were denied.³ If they were repetitive, it was because the State failed to provide discovery, even after it was ordered. CR71, 170, 171, 194, 211, 280, 282. In the case of Griebel's repeated requests for Netto's phone records, the evidence was exculpatory and necessary.⁴ CR31, 66. This Court found both periods weighed against the State.

Significantly, this Court misapprehended Ms. Rebsom's statement that Griebel 'did not want a trial', taking her statement out of context. The transcript shows that she was arguing that the case should be dismissed on constitutional grounds, prior to trial. This Court incorrectly found that three weighed against Griebel and should reverse its conclusion.

Although the court determined that the jail conditions were not 'oppressive,' this Court misapprehended the evidence presented. While Capt. O'Neill testified that there was no mold, he admitted that there was standing water where Griebel was held and admitted that plumbing issues existed at the time of the hearing. TR(8.23.23):219. Contrary to the Order, O'Neill did not testify that inmates used bars 'installed in their cells' because there are no bars in the cells. While Griebel did not provide evidence that his conversations were overheard by others, O'Neill

³ CR243 denied sanctions but ordered the State to produce the requested information.

⁴ The court did not impose sanctions for the State's failure to turn over Netto's phone in March 2023, although motions were filed in August 2022 and October 2022 and an incomplete phone dump (unreadable) was provided on December 29, 2022, and later in January 2023 (incomplete).

did not dispute that conversations could be heard and acknowledged that guards walked by while Griebel met with counsel, nor did he deny that detectives on this case were within earshot during counsel visits. TR(8.23.23):181, 218. Contrary to this Court's finding the doors did fail to 'shut properly' video evidence presented showed the doors are bent and cannot shut. Order:14, TR(8.23.23):EX.E1-5.

Further, while this Court found that Griebel was able to access some legal resources via a kiosk, O'Neill testified he did not know how to operate the kiosk, did not dispute that it did not always work, and acknowledged that written materials were outdated. TR(8.23.23):142-143, 198-199. Finally, contrary to the Order, Griebel did not always receive medical care, or timely medical care. For example, the jail failed to treat his ringworm and failed to treat bleeding from his ear. TR(8.23.23):199-200.

With respect to the death of witnesses and diminished memories of, contrary to the Order, Griebel requested that the State set up an interview with Glasson in November 2022, because she would not meet with defense without the State. CR338:19. The State failed to set the interview, and she died that December. This Court acknowledged that the court correctly found that the destruction of Trooper Wager's video and diminished memory regarding the events as well as Walter Brandon's diminished memories weighed against the State, ultimately finding that factor four weighed against the State.

Balancing the factors, and considering the facts and circumstances of this case, it is abundantly clear that the State's failure to timely bring this case to trial violated Griebel's right to a speedy trial guaranteed by the United States and Montana Constitutions. U.S. Const. Amend. VI and XIV, and Mont. Const. Art. 2, Sec. 24. This Court's decision was in error and the district court's dismissal of the case should be upheld.

Respectfully submitted this 8 day of January, 2025.

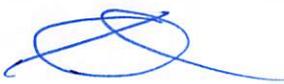


Kirsten Mull Core

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 20 of the Montana Rules of Appellate Procedure, I certify that this PETITION FOR REHEARING is printed with a proportionally spaced Times New Roman text typeface of 14 points, is double spaced, and the word count calculated by Word for Windows is not more than 2500 words, excluding Certificate of Service and Certificate of Compliance.

DATED this 8 day of January 2025.



Kirsten Mull Core

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing **PETITION FOR REHEARING** with the Clerk of the Montana Supreme Court and each party not represented by an attorney in the above-referenced District Court action as follows:

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(x) BY FACSIMILE/EMAIL/E-FILE SERVICE: I caused all the pages of the above-described document(s) to be sent to the recipient(s) listed above via electronic transfer at the respective facsimile numbers/EMAIL ADDRESS/E-FILING address indicated thereon.

I declare under penalty of perjury under the laws of the State of Montana that the above is true and correct.

Executed on January 8, 2025 at Bozeman, Montana.



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CERTIFICATE OF SERVICE

I, Kirsten Mull Core, hereby certify that I have served true and accurate copies of the foregoing Petition - Rehearing to the following on 01-09-2025:

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