

William M. Windsor
110 E Center Street #1213
Madison, SD 57042
Telephone: 770-578-1094
bill@billwindsor.com
Defendant, Pro Se

DEPKED.
Defendant Windsor consistently extracts snippets of the law convenient to his arguments, and overlooks the rest. He had done so again, ignoring § 45-1-206(3), M.C.A. and State v. Moga, 1999 MT 283, 297 Mont. 1, 929 P.2d 856.
This "motion" may be filed, and this Order Denying Windsor's motion to dismiss is final and requires no further briefing.

[Signature]
12/03/15

**MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY**

FILED DEC 03 2015

State of Montana,
Plaintiff,
v.
William Michael Windsor,
Defendant.

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Dept. No. 3
Cause No. DC-14-509
MOTION TO DISMISS
CHARGE #1 DUE TO
STATUTE OF LIMITATIONS
AND BRIEF IN SUPPORT
SHIRLEY E. FAUST, CLERK
By *[Signature]*
Deputy
email

William M. Windsor, Defendant, files this "Motion to Dismiss Charge #1 – Website due to Statute of Limitations," pursuant to Montana Code Annotated ("MCA") 45-1-205(2)(b), with incorporated Brief in Support. Windsor contacted the prosecutor's office for concurrence, and Ms. Clark stated that she will oppose this motion and did not have the time to justify the opposition.

1. MCA 45-1-205(2)(b) requires that "A prosecution for a misdemeanor must be commenced within 1 year after it is committed." (*Milanovich v. Milanovich*, (1982), 201 Mont. 332, 334, 655 P.2d 963, 964.) (See also *State v. Poncelet*, 187 Mont. 528, 610 P.2d 698 (Mont. 04/24/1980); *Dexter v. Shields*, 92 P.3d 1208, 322 Mont. 6, 2004 MT 159 (Mont. 06/22/2004); *State v. Hamilton*, 830 P.2d 1264, 252 Mont. 496 (Mont. 01/14/1992).)

2. Statute of Limitations has just become a defense in this case as the November 13, 2015 Second Amended Information [Docket #157] charges Count #1 as a misdemeanor. The State indicates this alleged crime was committed

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on August 24, 2013, over one year prior to the October 2, 2014 charge. The original Information said the alleged crime took place on October 2, 2014.

3. The substantive criminal statute is MCA 45-5-626: “(1) A person commits the offense of violation of an order of protection if the person, with knowledge of the order, purposely or knowingly violates a provision of any order provided for ... under Title 40, chapter 15.” The explicit language of this statute precludes any claim that the offense is a continuing one. If it was a violation as charged, that violation took place on August 24, 2013.

A particular offense should not be construed as continuing “unless the explicit language of the substantive criminal statute compels such a conclusion, or the nature of the crime involved is such that [the legislature] must assuredly have intended that it be treated as a continuing one.” (*Toussie v. United States* (1970), 397 U.S. 112, 115, 90 S.Ct. 858, 860, 25 L.Ed.2d 156, 161, citing *United States v. Scharton* (1932), 285 U.S. 518, 52 S.Ct. 416, 76 L.Ed. 917.

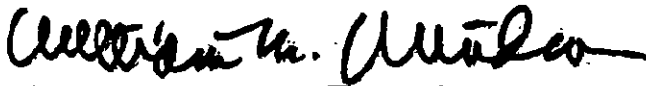
4. In *State v. Larson* (1989), 240 Mont. 203, 783 P.2d 416, the criminal offenses at issue occurred in October 1985. No charges were filed, however, until February 1988. At trial, the court reduced a theft charge from felony to misdemeanor after receiving evidence of the value of the items taken. In our opinion upholding the conviction, we stated, “[a]s a general rule, a defendant may not be convicted of a lesser included offense when the statute of limitations has run on that offense but not on the larger offense charged.” *Larson*, 240 Mont. at 205, 783 P.2d at 417, citing the Criminal Law Commission Comments to § 45-1-205, MCA. (*State v. Moga*, 1999 MT 283 (Mont. 11/23/1999).)

5. The statute of limitations is a jurisdictional issue. *Milanovich v. Milanovich*, supra. The alleged crime was committed on August 24, 2013 and was not charged until October 2, 2014. This Court has no jurisdiction as the statute of limitations on this misdemeanor expired.

6. In addition, the Second Amended information does not comply with the law. MCA 46-11-205 requires an affidavit stating facts that show the existence of probable cause to support the charge as amended. There is no affidavit.

WHEREFORE, for the reasons stated above, William M. Windsor requests that this Court order that Charge #1 is dismissed and order that Windsor has no restrictions on his websites.

This 2nd day of December 2015,



William M. Windsor

CERTIFICATE OF CONFERENCE

I hereby certify that I communicated with Jennifer Clark, and she opposes this Motion, but she was too busy to provide any support for her opposition.

This 2nd day of December 2015,



William M. Windsor

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Motion to Dismiss by email to Jennifer Clark, Deputy County Attorney, at jsclark@co.missoula.mt.us.

This 2nd day of December 2015,



William M. Windsor