

No. DA 18-0093

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

NOAH JOSEPH CHALUPA,

Defendant and Appellant.

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**REPLY BRIEF OF APPELLANT**

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On Appeal from the Montana Thirteenth Judicial District Court,  
Yellowstone County, the Honorable Rod E. Souza, Presiding

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The State's argument does not mitigate or excuse the fact that the plain meaning of Mr. Chalupa's sentence did not support or put him on notice that he could be revoked while he remained in custody on the sentence.

Mr. Chalupa does not contest the argument in the State's response that the State has a procedural ability to file a petition to revoke before the period of suspension had begun. (Appellee's Brief at 13.) Nor does he contest the State's ability to file new charges based upon the conduct at issue in this case. Nor does Mr. Chalupa challenge the constitutionality of any of the statutes implicated in this case. (Appellee's Brief at 10.) And contrary to the State's suggestion otherwise (Appellee's Brief at 9), Mr. Chalupa's signing the rules of probation had no bearing on whether those rules had taken effect. *Cf. State v. Graves*, 2015 MT 262, ¶ 17, 381 Mont. 37, 355 P.3d 769 (holding that not signing the rules of probation does not preclude revocation).

The state argues that the oral pronouncement of the sentence conditioned his entire sentence on the conditions listed. (Appellee's Brief at 12.) As argued by Mr. Chalupa in his initial brief, the district

court's oral pronouncement imposed the conditions by reference to the PSI which stated, "The following conditions of supervision are recommended for any suspended time imposed by the court..."

(Appellant's Brief at 8.) By orally imposing the conditions by reference to the PSI, the district court limited them to the PSI's plain language which applied them only to "suspended time." The district court's blanket reference to the PSI precludes the State from selectively ignoring language in it, after the fact, that does not suit its current argument.

Mr. Chalupa asks this Court to re-affirm that the most basic foundation of due process is fairness: that probationers must be assured that they can rely upon the language that they heard in the sentencing hearing and read in the sentencing documents to precisely and plainly define the limitations and obligations of their new lives on probation.

Mr. Chalupa's limitations and obligations were limited to "any suspended time imposed," (169 Doc. 22; 858 Doc. 11.), and "for any period of community supervision." (169 Doc. 23; 858 Doc. 12.) Mr. Chalupa asks this Court to re-affirm that sentences be understandable pursuant to both due process and Mont. Code Ann. § 46-18-101 (3)(a).

He asks this court to hold that, under the plain meaning of the sentencing hearing and documents in this case, the district court erred by finding that he violated those terms. The conduct alleged did not violate the plain terms of the sentence actually imposed. Without a valid finding that Mr. Chalupa violated the actual terms and conditions of his sentence, the district court was without authority to act under Mont. Code Ann. § 46-18-203(7).<sup>1</sup> *State v. Nelson*, 1998 MT 227, ¶ 24, 291 Mont. 15, 966 P.2d 133.

Respectfully submitted this 3rd day of July, 2019.

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<sup>1</sup> Should the Court decline to address Mr. Chalupa's constitutional argument as the State suggests, there is ample basis to decide the case favorably to Mr. Chalupa on statutory grounds as argued in the opening brief.

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply brief is printed with a proportionately spaced Century Schoolbook 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 557, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Gregory Hood  
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## **CERTIFICATE OF SERVICE**

I, Gregory Nelson Hood, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 07-03-2019:

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