
IN THE MATTER OF:

S.G.-H.M., JR.,

A Former Youth Under the Age of 18.

BRIEF OF APPELLANT

On Appeal from the Montana Twenty-First Judicial District Court,
Ravalli County, the Honorable Jeffrey H. Langton, Presiding

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STATEMENT OF THE ISSUES

Issue One: Under the Extended Jurisdiction Prosecution Act (EJPA), after unstaying and executing an adult sentence, Mont. Code Ann. § 41-5-1605(3) directs the youth court to transfer jurisdiction to the district court. Youth court jurisdiction under the EJPA otherwise terminates by age 25. After executing Appellant's adult EJPA sentence in 2013, the youth court did not order jurisdiction transferred to district court. Did the youth court possess jurisdiction over the State's 2017 petition to revoke where Appellant turned 25 in 2015?

Issue Two: When executing an adult EJPA sentence, Mont. Code Ann. § 41-5-1605(2)(b)(iii) requires granting credit for time served under the juvenile disposition portion of the sentence, which includes credit for juvenile probation. Upon application of mandatory credit for Appellant's time served on juvenile probation, Appellant's adult sentence expired prior to 2017. Did the youth court lack authority over the 2017 petition to revoke an expired sentence?

Issue Three: Alternatively, if the Court concludes the case was transferred to district court and the 2017 revocation petition was timely, did the district court violate Mont. Code Ann. § 46-18-203(7)(b)

by denying S.G.-H.M. street time credit for 220 days during his suspended sentence during which the State provided no record or recollection of probation violations?

STATEMENT OF THE CASE

This case involves S.G.-H.M. who, at 28 years old in 2018, was again under revocation proceedings for a juvenile matter that arose from him meddling with explosives when he was 16. (*See* Docs. 20, 98.) S.G.-H.M. timely appeals the 2018 revocation of his adult sentence that was originally imposed under the EJPA in 2006. (Docs. 98, 102.) Upon revocation in 2018, S.G.-H.M. was sentenced to two years to the Department of Corrections (DOC) with credit for 140 days of jail time. (11/7/18 Tr. at 24; Doc. 98 at 4, attached as App. A.)

This matter has continually delayed the commencement of a separate adult felony conviction. Around 2013, S.G.-H.M. received an adult felony conviction separate from this case. (Doc. 54, attached report.) S.G.-H.M. received a suspended sentence that was set to follow the sentence he currently appeals. (Doc. 54, attached report.) The juvenile matter on appeal has continually pushed back the

commencement and discharge dates of the separate adult conviction and prevented S.G.-H.M. from moving on.

2006 EJPA Original Proceeding

At age 16, S.G.-H.M. got in trouble for meddling with explosives. (See Doc. 8.) He was originally charged in Ravalli County district court under DC 06-132, with two felonies, possession of explosives and criminal endangerment. (Doc. 89 at 1-2.) Shortly thereafter, the State filed a petition in youth court under DJ 06-07, to proceed under the EJPA. (Doc. 10.) The youth court petition was filed pursuant to a plea agreement filed in both DC 06-132 and DJ 06-07. (Doc. 11.) Although this case thereafter proceeded in youth court under DJ 06-07, the “youth court” designation has not appeared in the heading of the courts’ filings. (*E.g.*, Docs. 10, 20 (filed with the heading “Montana Twenty-First Judicial District Court, Ravalli County”).)

The youth court orally imposed its disposition on November 22, 2006. (Docs. 18.1, 20.) For the two offenses that would have been felonies if committed by an adult, S.G.-H.M. received a juvenile disposition that consisted of formal probation until he reached the age of 23 (a period totaling approximately six and a half years). (Doc. 20 at

2.) S.G.-H.M. also received an adult sentence of six-years deferred on each count upon the conditions of a 2006 Presentence Investigation (PSI), with the sentences on each count to run concurrent with one another. (Doc. 20 at 6-7.) The youth court stayed execution of the adult sentence on the condition S.G.-H.M. abide by his juvenile disposition and not commit a new offense. (Doc. 20 at 7.)

S.G.-H.M. remained on youth probation for the next six years. In this time, the State took no action to revoke S.G.-H.M.'s youth probation. Three years into his probation, the State filed a letter recounting some possible violations related to signing up for the Marines a year before, but no petition to revoke was filed and the probation officer was "fine with not issuing a warrant." (Doc. 21.) A year later, an authorization to take S.G.-H.M. in custody for probation violations was filed, but again no petition to revoke was filed. (Doc. 22.)

Revocation and Imposition of Adult Sentence

On the cusp of S.G.-H.M. completing his juvenile probation, six years and four months after it began, the State filed a petition to revoke. (Doc. 24.) S.G.-H.M. was now 22 years old.

On July 10, 2013, S.G.-H.M. (now 23) admitted to violating four conditions. (Docs. 24, 33; 7/10/13 Tr. at 3-4.) Pursuant to an agreement between the parties, he admitted that three years prior, when he was 20, he possessed alcohol and was cited for both possession of alcohol and vagrancy. (Docs. 24, 33; 7/10/13 Tr. at 3-6.) He admitted he did not complete a chemical dependency evaluation or a substance abuse program. (Docs. 24, 33; 7/10/13 Tr. at 4.) The parties asked the youth court to impose the adult sentence, modified to three-years deferred on both counts, upon the conditions of the 2006 PSI, to run concurrent with one another. (7/10/13 Tr. at 5-6.)

The youth court found S.G.-H.M. in violation of his probation and ordered it would “implement the adult sentence in a modified form” and imposed the recommended three-year deferred sentences. (7/10/13 Tr. at 7.) The judgment did not state whether S.G.-H.M. would receive credit for the six and half years he served on his juvenile disposition prior to revocation. (Doc. 34.)

After revoking and imposing the adult sentence, the youth court did not issue any order transferring the case from youth court to district court. At the revocation hearing and in the written judgment, transfer

of jurisdiction to district court was never mentioned. (*See* Doc. 34; 7/10/13 Tr.) At the revocation hearing the youth court asked if “this will be under the supervision of Adult Probation and Parole.” (7/10/13 Tr. at 8.) The parties agreed that it would (7/10/13 Tr. at 8), but no discussion occurred regarding jurisdiction or transferring the case to district court.

No new cause number was opened with a “DC” cause number, nor did the case return to the previous “DC” cause number. Rather, the case continued to proceed in youth court under the “DJ” cause number it was originally filed under. (*E.g.*, Docs. 37, 51, 55.) It retained the “In the Matter of” caption reflective of its juvenile designation. (*E.g.*, Docs. 37, 51, 55.) S.G.-H.M. continued to be referred to as “the Youth.” (*E.g.*, Docs. 37, 51, 55.)

Subsequent Proceedings

A few months later, a petition to revoke was filed under DJ 06-07. (Doc. 37.) S.G.-H.M. eventually admitted violations. (Doc. 49.)

On January 29, 2014, the youth court revoked the deferred adult sentences, and S.G.-H.M. was sentenced to five years DOC with two years suspended, upon the previous conditions. (Doc. 51 at 3-4.) The judgment reflected no credit for the six and a half years of time served

on the juvenile disposition portion of the original sentence. S.G.-H.M. received 63 days of detention credit, and the youth court denied any “probation time credit.” (Doc. 51 at 3.)

Again, no order was issued transferring jurisdiction to the district court. The judgment simply set forth that “supervisory responsibility” of S.G.-H.M. “remains transferred” to the “Adult Probation and Parole Bureau.” (Doc. 51 at 3.)

In 2015, S.G.-H.M. turned 25 while on the custodial portion of the 2014 sentence. (Doc. 89 at 4.)

Third and Final Revocation Proceeding

On November 27, 2016, S.G.-H.M. began the probationary portion of the 2014 sentence, according to the terms of the 2014 judgment. (*See* Docs. 51, 86 at 10.) He was now 26 years old.

A year later, the State filed its third petition to revoke in October 2017. (Doc. 55.) S.G.-H.M. was now 27 years old. The State’s alleged violations began on July 5, 2017, with the allegation S.G.-H.M. failed to appear at his probation officer’s office as scheduled. (Doc. 55 at 2.)

S.G.-H.M. (now 28 years old) filed a motion to dismiss for lack of jurisdiction. (Doc. 80.) S.G.-H.M. argued the youth court was holding

him illegally because it never issued any order transferring the case to district court as directed by Mont. Code Ann. § 41-5-1605(3). (Doc. 80 at 3-4.) S.G.-H.M. argued the youth court had lost jurisdiction because youth court jurisdiction under the EJPA ends at age 25. (Doc. 80 at 3-4.) As evidence for the matter never having been transferred to district court, S.G.-H.M. pointed out the matter retained the youth court caption “IN THE MATTER OF [S.G.-H.M.], A Youth Under the Age of 18” and his own repeated designation as “the Youth.” (Doc. 87 at 2.)

In response, the State agreed the youth court never issued a written order transferring the case to district court. (*See* Doc. 86 at 8-9.) But the State argued the youth court “effectively transferred jurisdiction to itself acting as the District Court judge” by virtue of imposing the adult sentence in 2013 and transferring supervision to adult probation and parole. (Doc. 86 at 9.) The State argued that jurisdiction transferred “by operation of § 41-5-1605, MCA” when the adult sentence was executed on July 10, 2013, and that any error was, “[a]t most,” “a clerical error or omission.” (Doc. 86 at 9.)

An order was issued denying S.G.-H.M.’s motion, in which the youth court decided it was actually the district court. (Doc. 89 at 14,

attached as App. B.) The now-district court concluded it was not required to order jurisdiction transferred from youth court to district court to comply with Mont. Code Ann. § 41-5-1605(3). (*See* Doc. 89 at 11, 14-15.) The now-district court concluded jurisdiction automatically transferred to district court the moment the youth court executed the adult sentence on July 10, 2013. (Doc. 89 at 14.) The now-district court concluded that, after 2013, despite having never issued an order transferring jurisdiction and having proceeded entirely under a DJ caption and cause number, that the case was under district court jurisdiction. (*See* Doc. 89 at 14-15.) The court reasoned that it would lead to the “absurd result” of no court having jurisdiction over the case to hold otherwise. (*See* Doc. 89 at 15.)

The case proceeded to a revocation hearing at which S.G.-H.M.’s probation officer admitted S.G.-H.M. had at least a “couple of months” of probation compliance between November 2016 and July 2017. (11/7/18 Tr. at 7-8, 17.) He acknowledged the first documented violation of the most recent sentence was S.G.-H.M.’s failure to report on July 5, 2017. (11/7/18 Tr. at 15.)

S.G.-H.M. asked for credit for street time, citing the time he was on probation without violations. (11/7/18 Tr. at 21-22.) The State objected to any street time credit due to “the lengthy periods of absconding and somewhat minimal compliance prior to those absconding periods.” (11/7/18 Tr. at 21.) No ruling was made on the street time request, but the judgment did not grant credit for street time.¹ (Doc. 98.) As mentioned previously, S.G.-H.M. appeals the January 29, 2019 revocation judgment.

STATEMENT OF THE FACTS

A statement of facts contains “facts relevant to the issues presented for review.” Mont. R. App. P. 12(1)(d). Here, the issues presented are pure questions of law. No additional facts beyond those recounted in the Statement of the Case are necessary.

¹ The 2019 judgment’s caption adds the word “former” when referring to the matter. (Doc. 98, entitled “IN THE MATTER OF [S.G.-H.M.], A *Former* Youth Under the Age of 18” (emphasis added).) No motion to amend was made or granted as to the caption, although when pronouncing the sentence, the judge said, “I guess we could call you a former youth in this matter.” (11/7/18 Tr. at 23-24.)

STANDARD OF REVIEW

This Court reviews the interpretation and application of the Youth Court Act for correctness. *In re J.A.*, 2011 MT 132, ¶ 5, 361 Mont. 16, 255 P.3d 150. The Court reviews the interpretation and application of any statutory provision de novo. *State v. Jardee*, 2020 MT 81, ¶ 5, 399 Mont. 459, 461 P.3d 108. The Court reviews for legality a criminal sentence of over one year of incarceration. *State v. Thomas*, 2019 MT 155, ¶ 5, 396 Mont. 284, 445 P.3d 777.

The Court interprets a statute by first looking to its plain language. *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 450 P.3d 898. The Court does not “insert what has been omitted or [] omit what has been inserted.” Mont. Code Ann. § 1-2-101. The Court reads and interprets the statute as a whole accounting for “the statute’s text, language, structure, and object.” *Fox*, ¶ 18 (citation omitted).

SUMMARY OF THE ARGUMENT

Nearing his 30s, S.G.-H.M. remained bound by a youth court matter that began when he was 16. The winding road of this case was fraught with disregarded statutory safeguards. It is long overdue for the road to end, as this Court should now hold.

The youth court erred in concluding jurisdiction automatically transferred to district court upon the youth court's 2013 execution of the adult sentence. The plain language of Mont. Code Ann. § 41-5-1605(3)—a key provision to facilitate the EJPA's dual juvenile and adult sentencing authority—explicitly directs the youth court to order jurisdiction transferred to district court after executing the adult sentence. The statute provides that, upon revocation and execution of the adult sentence, the youth court “shall transfer the case to the district court.” Mont. Code Ann. § 41-5-1605(3). Here, after executing S.G.-H.M.'s adult sentence in 2013, the youth court never made any order directing jurisdiction transferred to district court. Rather, as evidenced by the unchanged DJ cause number, youth court caption, and “Youth” designation, the youth court kept jurisdiction over this matter. The youth court's failure to transfer jurisdiction to district court precluded the district court from acquiring jurisdiction. The youth court's jurisdiction terminated in 2015 when S.G.-H.M. turned 25 under

Mont. Code Ann. § 41-5-205(3). Thus, the youth court lacked jurisdiction over the 2017 petition to revoke.²

Alternatively, no Montana court possessed authority to act on the State's 2017 petition to revoke because S.G.-H.M.'s sentence expired three years prior due to mandatory credit under Mont. Code Ann. § 41-5-1605(2)(b)(iii). Montana Code Annotated § 41-5-1605(2)(b)(iii) requires that, if and when the adult sentence is executed in an EJPA case, the youth court must credit the adult sentence with "any time served prior to revocation under a disposition under 41-5-1604(1)(a)(i)," which refers to the original juvenile disposition portion of the sentence. Juvenile dispositions that may be originally imposed under Mont. Code Ann. § 41-5-1604(1)(a)(i) include "plac[ing] the youth on probation" under Mont. Code Ann. § 41-5-1512(1). Thus, reading the statutes together, time served on an original juvenile disposition, including juvenile probation, must be credited against an adult sentence executed upon the juvenile disposition's revocation.

² S.G.-H.M. disagrees with the lower court's conclusion that it became the district court after 2013 and therefore refers to the lower court throughout this brief as the "youth court."

Here, from 2006 to the 2013 revocation, S.G.-H.M. spent roughly six and a half years on juvenile probation. With six and a half years correctly credited towards S.G.-H.M.'s adult EJPA sentence, his sentence discharged in 2014. No court possessed authority to act on the later-filed 2017 petition to revoke an expired sentence.

If the Court concludes S.G.-H.M. does not prevail under either of the first two issues, the Court must remand for 220 days of street time credit to be added to S.G.-H.M.'s sentence. The State provided no "record or recollection of violations" between November 27, 2016, and July 5, 2017, to defeat S.G.-H.M.'s entitlement to street time credit for that period under Mont. Code Ann. § 46-18-203(7)(b).

ARGUMENT

- I. The youth court lacked jurisdiction over the State's 2017 petition to revoke because S.G.-H.M. turned 25 in 2015, and the youth court precluded jurisdiction from extending past S.G.-H.M.'s 25th birthday because it never transferred jurisdiction to the district court.**

Jurisdiction is "the court's fundamental authority to hear and adjudicate cases or proceedings." *In re A.D.B.*, 2013 MT 167, ¶ 54, 370 Mont. 422, 305 P.3d 739. The question of subject matter jurisdiction may be raised at any time and cannot be acquiesced to. *Pinnow v.*

Mont. State Fund, 2007 MT 332, ¶ 16, 340 Mont. 217, 172 P.3d 1273.

Courts “have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.” *Pinnow*, ¶ 16 (citation omitted).

“Montana recognizes that youths are to be given special treatment by the courts.” *In re Cascade Cty. Dist. Court*, 2009 MT 355, ¶ 14, 353 Mont. 194, 219 P.3d 1255. A misbehaving youth may find himself the subject of a petition to be declared a delinquent youth filed in youth court. Mont. Code Ann. § 41-5-1401. A youth may become the subject of an Information filed in district court asking to treat the youth as an adult in the adult criminal system for certain crimes. Mont. Code Ann. § 41-5-206. Or a youth may become the subject of a petition for an EJPA case filed in youth court. Mont. Code Ann. § 41-5-1602.

S.G.-H.M. was prosecuted under the EJPA, Mont. Code Ann. § 41-5-1601, et seq. The EJPA is part of the Youth Court Act (YCA), located in Title 41, Chapter 5 of the Montana Code Annotated. Unlike the adult system, the purpose of the juvenile system under the YCA is to “prevent and reduce youth delinquency through a system that does not seek retribution but that provides” “immediate . . . consequences of a

youth's actions" and "supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders." Mont. Code Ann. § 41-5-102(2)(a)-(b).

The EJPA provides an option for, in certain cases, youths to be treated as youths in the juvenile system with the possibility of adult sanctions past the age of 25. *See* Mont. Code Ann. §§ 41-5-1604, -1605.

Under the EJPA, if a youth admits to, or is adjudicated to have committed certain offenses that would be a felony if committed by an adult, the youth court under the EJPA must impose a single judgment consisting of two parts: a juvenile disposition and a stayed adult sentence. Mont. Code Ann. § 41-5-1604(1)(a). In the first part of the judgment, the youth court imposes "one or more juvenile dispositions under 41-5-1512 or 41-5-1513" of the YCA. Mont. Code Ann. § 41-5-1604(1)(a)(i). In the second part of the judgment, the youth court imposes any sentence that would be permissible if the youth were an adult, as long as the combined time of the two parts of the judgment do not exceed the maximum period of imprisonment an adult could receive. Mont. Code Ann. § 41-5-1604(1)(a)(ii), (b).

The youth court must stay the execution of the adult sentence on the condition that the youth comply with the juvenile disposition order and not commit any new offenses. Mont. Code Ann. § 41-5-1604(1)(a)(ii). If the youth subsequently violates the terms of his probation or commits a new offense, the youth court possesses several options under Mont. Code Ann. § 41-5-1605. One option is to order execution of the adult sentence. Mont. Code Ann. § 41-5-1605(2)(b)(iii).

Recognizing that the EJPA combines adult sanctions with youth court treatment, the Legislature created several statutes that specifically address jurisdiction. While the youth court generally possesses jurisdiction over youths until the age of 21, the youth court in an EJPA case generally possesses jurisdiction until the age of 25. Mont. Code Ann. § 41-5-205(1), (3) (“The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes 25 years of age unless the court terminates jurisdiction before that date.”). However, if an adult sentence is ultimately executed under the EJPA, the sentence length may extend past the youth turning the age of 25. *See* Mont. Code Ann. § 41-5-

1604(1)(a)(ii), -1605(2)(b)(iii). Thus, a change of jurisdiction from youth court to district court may become necessary after execution of the adult sentence if the sentence is to extend past the youth turning 25. The EJPA explicitly addresses this and directs the youth court to transfer jurisdiction to district court upon execution of the adult sentence in the EJPA's revocation statute, Mont. Code Ann. § 41-5-1605.

Under Mont. Code Ann. § 41-5-1605(3), if the youth court chooses to order execution of the adult sentence upon revocation, the youth court must take two steps. First, the youth court must execute the adult sentence under Mont. Code Ann. § 41-5-1605(2)(b)(iii). Second, the youth court must transfer jurisdiction to district court: "Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the case to the district court." Mont. Code Ann. § 41-5-1605(3). After the youth court transfers jurisdiction to district court, "the offender's extended jurisdiction juvenile status is terminated and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the department, rather than the youth court's juvenile probation services." Mont. Code Ann. § 41-5-1605(3). Building off of Mont. Code Ann. § 41-5-1605(3)'s mandated explicit transfer of

jurisdiction to district court, Mont. Code Ann. § 41-5-205(2)(c) provides that youth court jurisdiction terminates when “execution of a sentence is ordered under 41-5-1605(2)(b)(iii) and the supervisory responsibilities are transferred to the district court under 41-5-1605.”

Here, when S.G.-H.M. was 23 in 2013, the youth court chose to execute S.G.-H.M.’s adult sentence under the EJPA. While the youth court took the first step of ordering execution of the adult sentence, this case hinges on whether the youth court did the second step and followed Mont. Code Ann. § 41-5-1605(3)’s demand that it “shall transfer the case to the district court,” and whether the court did so prior to S.G.-H.M. turning 25 in 2015 and the youth court losing jurisdiction under Mont. Code Ann. § 41-5-205(3).

It is undisputed the youth court did not issue any order directing the transfer of jurisdiction to district court. (Doc. 89 at 14 (youth court acknowledging “the lack of a written order transferring this case to District Court”); *see* Doc. 86 at 8-9 (State’s response working from the premise that “no formal written order [was] issued explicitly proclaiming” transfer of the case from youth court to district court).) When the adult sentence was executed on July 10, 2013, the youth court

issued no order transferring the case, either orally or in writing. At the hearing, no party mentioned the need to transfer jurisdiction to district court.³ Transferring jurisdiction to district court simply was not discussed, at the hearing or in the judgment. Additional evidence of the lack of transfer was the fact that the case continued to proceed under its DJ cause number and “In re” caption; all petitions to revoke were filed with the DJ cause number with the “In re” caption. (*E.g.*, Docs. 37, 55.) In fact, one of the few court filings with a heading that included “Youth Court” was an acknowledgment of rights filed after 2013. (Doc. 46 (acknowledgement of rights, filed January 8, 2014).) The youth court plainly did not order the transfer of jurisdiction to district court as directed by Mont. Code Ann. § 41-5-1605(3).

The youth court attempted to remedy its mistake by reasoning it was not required to issue an order transferring jurisdiction to district court to satisfy Mont. Code Ann. § 41-5-1605(3) and transfer the case. (*See* Doc. 89 at 14.) The youth court concluded the transfer of jurisdiction to district court was self-executing upon execution of the

³ Although the transcript of the July 10, 2013 hearing was not produced in the proceedings below, that transcript has been produced and added to the record. Order, DA 19-0119 (August 6, 2020).

adult sentence. (See Doc. 89 at 14.) The youth court concluded jurisdiction automatically transferred to district court when the adult sentence was imposed on July 10, 2013. (Doc. 89 at 14.) The youth court concluded “jurisdiction transferred to the District Court” on July 10, 2013, when the “juvenile sentence was revoked and his previously stayed adult sentence was imposed, pursuant to § 41-5-1605(2)(b)(iii), MCA.” (Doc. 89 at 14.) The youth court concluded that, at that time, S.G.-H.M. entered the jurisdiction of the district court and youth court jurisdiction simultaneously terminated, despite no express order to that effect. (Doc. 89 at 14.)

The youth court’s reasoning failed to acknowledge the plain text of Mont. Code Ann. § 41-5-1605(3). The crux of the mixed bag of tools available in an EJPA case depends upon courts carefully managing the limits of their subject matter jurisdiction. See *Pinnow*, ¶ 16 (noting courts’ “independent obligation to determine whether subject-matter jurisdiction exists”). Montana Code Annotated § 41-5-1605(3) does not provide that jurisdiction automatically transfers to district court upon execution of the adult sentence. The statute does not say, for example, that “upon execution of the adult sentence, jurisdiction transfers to

district court.” Rather, upon execution of the adult sentence “the youth court shall transfer the case to the district court.” Mont. Code Ann. § 41-5-1605(3). The statute places the onus on the youth court to make an explicit order transferring the case to district court. “Self-executing” means “taking effect immediately without the need of any type of implementing action.” *Solid Waste Cont. v. Dep’t of Pub. Serv. Reg.*, 2007 MT 154, ¶ 24, 338 Mont. 1, 161 P.3d 837 (quoting Black’s Law Dictionary 1364 (7th ed., West 1999)). Montana Code Annotated § 41-5-1605(3) expressly directs the youth court to act to transfer the case to district court. Thus, the statute is not self-executing, as the youth court concluded. *See Solid Waste Cont.*, ¶ 24. There is no ambiguity. Jurisdiction does not automatically transfer to district court.

In the EJPA context, at least one court has concluded an express transfer to district court jurisdiction is required. In *State v. Hinkle*, 2008 MT 217, ¶¶ 5-7, 344 Mont. 236, 186 P.3d 1279, the Court noted when recounting the procedural history of the case that, after the original EJPA sentence was imposed and the youth violated juvenile probation, the youth court “revoked Hinkle’s probation under the Youth Court Act and transferred the matter back to the District Court for

further proceedings.” The appeal was taken, not from youth court, but from Cascade County “District Court.” *Hinkle*, ¶ 1; *see also*, *Matter of S.L.M.*, 287 Mont. 23, 30, 951 P.2d 1365, 1370 (1997) (describing the EJPA and explaining that upon revocation, “the youth court shall transfer the case to the district court”).

Under the youth court’s interpretation, the youth court need not do *anything* except execute the adult sentence and—poof! as if by magic—the “fundamental authority to hear and adjudicate” the case moves to an entirely different court. The case may proceed exactly as it did before—with no order transferring jurisdiction and with the same DJ cause number and the same caption—but the person is in the world of district court jurisdiction with no jurisdictional cap at age 25. The Legislature did not create such a scheme. The Legislature provided that for the court system to maintain jurisdiction over an executed adult sentence under the EJPA—a sentence that could extend past the youth court’s 25-year-old jurisdictional age cap—the youth court must explicitly transfer jurisdiction to the district court. Mont. Code Ann § 41-5-1605(3). Here, the youth court did not.

It is true that S.G.-H.M.'s supervision transferred to adult *probation and parole*, but jurisdiction did not transfer to *district court*. At the July 10, 2013 hearing, it was mentioned that S.G.-H.M.'s supervision would be under adult probation and parole. (7/10/13 Tr. at 8 (the parties agreeing to the youth court's question "this will be under the supervision of Adult Probation and Parole, right?"); see Doc. 51 at 3 (second revocation judgment stating supervision remained "transferred from Juvenile Probation Services to the Montana Department of Corrections, Adult Probation and Parole Bureau").) But neither the youth court nor the parties mentioned transferring jurisdiction to district court. Under Mont. Code Ann. § 41-5-203(3)(b)(v), a youth court possesses the power in an EJPA case to, "after revocation, transfer execution of the stayed sentence to *the department*." (Emphasis added.) In a separate section, the youth court possesses the power in an EJPA case to "transfer a juvenile case to *district court* after notice and hearing." Mont. Code Ann. § 41-5-203(3)(b)(vii) (emphasis added). While the youth court possesses the power to transfer supervision to the department, it is a separate power that requires a separate act to transfer the entire case to district court under Mont. Code Ann § 41-5-

1605(3). What probation department is supervising the person does not answer what court correctly possesses jurisdiction over the case.

In the years leading up to S.G.-H.M.'s 25th birthday in 2015, the youth court continuously failed to transfer jurisdiction to district court. Since the youth court never "transfer[red] the case to the district court" as directed by Mont. Code Ann. § 41-5-1605(3), the district court never acquired jurisdiction. When S.G.-H.M. turned 25 in 2015, the youth court lost jurisdiction under Mont. Code Ann. § 41-5-205(3).

The Court held the youth court lost jurisdiction in the similar non-EJPA youth case of *In re J.A.* In *In re J.A.*, ¶ 11, the youth was adjudicated delinquent for unlawful activity when he was under 18 and was placed on probation for a year. Before probation ended, the State filed a petition to revoke and transfer the case to district court under Mont. Code Ann. § 41-5-208. *In re J.A.*, ¶ 11. J.A. left Montana and turned 21 before the youth court transferred the case. *In re J.A.*, ¶¶ 3-4, 11. As mentioned above, Mont. Code Ann. § 41-5-205(1), sets the youth court's non-EJPA jurisdictional limit as age 21.

The Court reversed the youth court and held that, when J.A. turned 21, the youth court lost jurisdiction over him under Mont. Code

Ann. § 41-5-205(1) because “an order transferring the case was not issued before J.A. turned 21.” *In re J.A.*, ¶¶ 11-12. “Under the plain wording of § 41-5-205, MCA, the Youth Court lost jurisdiction over J.A. when he turned 21.” *In re J.A.*, ¶ 12. The youth court had been persuaded by the argument that holding otherwise would lead to the “absurd result” of rewarding an absconding youth. *In re J.A.*, ¶ 13. However, the Court rejected that argument and recognized “we cannot extend youth court jurisdiction beyond what the Legislature has clearly provided.” *In re J.A.*, ¶¶ 13-14.

Likewise, here, “an order transferring the case” to district court was not issued before S.G.-H.M. turned 25. *In re J.A.*, ¶ 11. Like *In re J.A.*, ¶ 13, the youth court wrongly accepted the reasoning that S.G.-H.M.’s jurisdictional argument was wrong because it led to the “absurd result” of no court having jurisdiction over S.G.-H.M.’s adult sentence. (*See Doc. 89 at 15.*) The youth court was required to follow the law to maintain Montana’s jurisdiction over an executed adult sentence in an EJPA case. *See In re J.A.*, ¶ 14. The youth court never “transfer[red] the case to the district court” as directed by Mont. Code Ann. § 41-5-1605(3), thus precluding the district court from acquiring jurisdiction.

The youth court lost jurisdiction over this matter when S.G.-H.M. turned 25 in 2015 under Mont. Code Ann. § 41-5-205(3). The youth court erred in concluding that—without having ever ordered the case transferred to district court—it was acting as a district court and had been since the 2013 execution of S.G.-H.M.’s adult sentence. The order denying S.G.-H.M.’s motion to dismiss must be reversed.

II. The youth court lacked authority over the 2017 revocation petition because S.G.-H.M.’s sentence had previously expired due to mandatory credit for S.G.-H.M.’s time served under his original juvenile disposition on juvenile probation.

If the Court provides relief on Issue One, then it may decline to review the two issues presented below. The Court may also decline to review Issues One and Three by ruling in S.G.-H.M.’s favor on Issue Two.

As noted above, under the EJPA, the youth court is to impose a single judgment consisting of two parts: a juvenile disposition and a stayed adult sentence. Mont. Code Ann. § 41-5-1604(1)(a). The first part of the judgment is set out in Subsection (1)(a)(i) and authorizes the youth court to impose “one or more juvenile dispositions under 41-5-1512 or 41-5-1513.” The second part of the judgment is set forth in

Subsection (1)(a)(ii) and authorizes the youth court to impose any sentence that would be permissible if the youth were an adult.

If, upon revocation, the youth court chooses to order execution of the adult sentence, “[t]he court shall order credit for any time served prior to revocation under a disposition under 41-5-1604(1)(a)(i).” Mont. Code Ann. § 41-5-1605(2)(b)(iii). Again, subsection (1)(a)(i) of § 41-5-1604 references the juvenile part of the original judgment and specifically authorizes the youth court to impose “one or more juvenile dispositions under 41-5-1512 or 41-5-1513.” Montana Code Annotated § 41-5-1512, in turn, provides general dispositional options for juveniles under the YCA, and the first option is to “place the youth on probation” under subsection (1)(a).

The credit provision of Mont. Code Ann. § 41-5-1605(2)(b)(iii) plainly requires a youth court when executing the adult sentence to “order credit for any time served prior to revocation under a disposition under 41-5-1604(1)(a)(i),” which includes credit for time served on juvenile probation on the original juvenile disposition. By § 41-5-1605(2)(b)(iii)’s specific reference to a “disposition under 41-5-1604(1)(a)(i),” which directly refers to “juvenile dispositions under 41-5-

1512” of which the first option is to “place the youth on probation,” the plain language provides that a youth must be credited against his adult sentence for time served on juvenile probation prior to revocation.

Montana Code Annotated § 41-5-1605(2)(b)(iii)’s mandate recognizes a youth’s time under a juvenile disposition in an EJPA case, including time on probation, is not meaningless and requires credit toward an eventual adult sentence that may be executed. A similar recognition infuses the adult system, where, like the EJPA, Mont. Code Ann. § 46-18-203(7)(b) now requires credit for probation upon revocation, although this credit may end upon a “record or recollection of violations.” *See Jardee*, ¶¶ 9-10.

Here, S.G.-H.M. spent six years and roughly seven months on formal probation under his juvenile disposition prior to the 2013 revocation of the original juvenile disposition. (Docs. 20 (commencing S.G.-H.M.’s juvenile probationary disposition on November 22, 2006), 34 (revoking S.G.-H.M.’s juvenile disposition on July 10, 2013).) Montana Code Annotated § 41-5-1605(2)(b)(iii) required crediting those six years and seven months of juvenile probation against any unstayed and executed adult EJPA sentence imposed upon revocation.

Properly credited, S.G.-H.M.'s adult EJPA sentence discharged well before the 2017 revocation petition, on January 29, 2014. This is the discharge date because, though the juvenile disposition credit predated the 2013 unstayed adult sentence, it did not reduce the 2013 sentence because S.G.-H.M. received deferred sentences at that time. (Doc. 34.) Statutorily-mandated credit does not apply to a deferred sentence because a deferred sentence has not yet been imposed. *See Petition of Gray*, 163 Mont. 321, 322-23, 517 P.2d 351, 352 (1973); *see also, State v. McCaslin*, 2011 MT 221, ¶¶ 14-16, 362 Mont. 47, 260 P.3d 403. However, when a deferred sentence is revoked and a non-deferred sentence is imposed, statutorily-mandated credit must be applied to the new sentence. *See McCaslin*, ¶¶ 14-16; *Maldonado v. Crist*, 162 Mont. 240, 241-42, 510 P.2d 887, 887-88 (1973) (requiring statutorily-mandated credit upon revocation of a deferred sentence and imposition of an incarceration sentence). Thus, when S.G.-H.M. was revoked the second time in 2014 and the adult sentence first became a non-deferred sentence of 5 years DOC with 2 years suspended (Doc. 51), Mont. Code Ann. § 41-5-1605(2)(b)(iii)'s mandatory credit of over six years applied to discharge the sentence.

The youth court lacked authority to revoke in 2017 since S.G.-H.M.'s sentence discharged in 2014. A revocation of a sentence is facially illegal where the legal portion of the sentence expired before the petition to revoke was filed. *Borgen v. Sorrell*, 2009 MT 143, ¶ 9, 350 Mont. 339, 217 P.3d 1022. In addition, where a court exceeds statutory mandates, such as by proceeding on a revocation petition in the absence of any lawful statutory authority, the illegality can be raised for the first time on appeal. See *Borgen*, ¶ 9; *State v. Erickson*, 2005 MT 276, ¶ 27, 329 Mont. 192, 124 P.3d 119; cf. *City of Kalispell v. Salsgiver*, 2019 MT 126, ¶ 41, 396 Mont. 57, 443 P.3d 504 (“Notwithstanding a defendant’s active acquiescence, participation, or agreement, an otherwise illegal provision of a sentence cannot allow for the imposition of a sentencing condition bereft of statutory authority.”). This Court must dismiss the 2017 revocation proceeding because the court below lacked authority to revoke a legally expired sentence.

III. Alternatively, the district court violated Mont. Code Ann. § 46-18-203(7)(b) by denying S.G.-H.M. street time credit for 220 days of his suspended sentence during which the State provided no record or recollection of probation violations.

If the Court rejects Issues One and Two, then it must reach Issue Three and conclude the lower court, operating as the “district court,” erred in not granting S.G.-H.M. credit for 220 days of street time from November 27, 2016, to July 5, 2017.

Montana Code Annotated § 46-18-203(7)(b) provides that when a suspended sentence is revoked, “the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and allow all of the elapsed time served without any record or recollection of violations as a credit against the sentence.”

Furthermore, “[i]f the judge determines that elapsed time should not be credited, the judge shall state the reasons for the determination in the order.” Mont. Code Ann. § 46-18-203(7)(b).

Although the pre-2017 version of Mont. Code Ann. § 46-18-203(7)(b) “granted discretion to a sentencing court to either grant or deny credit for street time,” the 2017 Legislature “eliminate[d] this discretion” and the statute now “requir[es] credit if there have been no violations.” *Jardee*, ¶ 10. “[T]o defeat the credit,” the statute “requires

a specific demonstration of a ‘record or recollection of violations’ in the period in question.” *Jardee*, ¶ 10. The 2017 version of the statute applies here, as it was in effect during this revocation proceeding.

Under Mont. Code Ann. § 46-18-203(7)(b), it is “insufficient for a district court to base a denial of street time credit solely on a ‘pattern’ of criminal behavior.” *Jardee*, ¶ 11. The State must “point to an actual violation by the defendant, in the relevant time period,” which is “found in the record or recollection of the probation officer,” in order to “establish a basis for denial of street time credit for that period.”

Jardee, ¶ 11.

Here, under Mont. Code Ann. § 46-18-203(7)(b), S.G.-H.M. was entitled to street time credit from November 27, 2016, on July 5, 2017 (a period of 220 days). S.G.-H.M. began supervision on the probationary portion of his sentence on November 27, 2016. (*See Docs. 51, 86 at 10.*) His first documented violation was July 5, 2017, when he failed to report. (11/7/18 Tr. at 15.) The State showed no record of violations up to that point. S.G.-H.M.’s probation officer expressly agreed he had at least “a couple of months” of no violations. (11/7/18 Tr. at 17.) The State failed to provide a “record or recollection” of any violations before

July 5, 2017; rather, the record evinced S.G.-H.M. was compliant with probation for at least a portion of this time.

S.G.-H.M. requested credit for street time, expressly pointing out he had at least two months without violations. (11/7/18 Tr. at 21-22.) The State objected but did not rebut S.G.-H.M.'s request with evidence of actual violations between November to July. Rather, the State argued against the credit by generally citing "the lengthy periods of absconding and somewhat minimal compliance prior to those absconding periods." (11/7/18 Tr. at 21.) But, the State applied the wrong standard under Mont. Code Ann. § 46-18-203(7)(b). "[I]t is now insufficient for a district court to base a denial of street time credit solely on a 'pattern' of criminal behavior." *Jardee*, ¶ 11.

Likely using the same erroneous standard employed by the State, the district court erroneously failed to provide S.G.-H.M. credit. The district court did not expressly rule on S.G.-H.M.'s street-time credit request at sentencing, and the judgment contains no reasons for denying it. Yet, the judgment also does not provide S.G.-H.M. credit. The district court presumably accepted the State's argument under the wrong standard for denying street time credit. But, absent an

affirmative showing from the State, S.G.-H.M. was presumptively entitled to such credit. *See Jardee*, ¶¶ 10-11. The district court erred in not crediting S.G.-H.M. with street time credit for 220 days.

Although S.G.-H.M. asked below for “at least 60 days” of street time credit (11/7/18 Tr. at 21-22), on this record, he was entitled to more. His request for 220 days is properly before this Court as it was within the objection made in district court, which cited his period of compliance. Moreover, failure to grant the street time credit exceeds statutory authority and may be raised for the first time on appeal. *See Erickson*, ¶ 27. S.G.-H.M.’s sentence must be corrected to add 220 days of street time credit.

CONCLUSION

Enough is enough. S.G.-H.M.’s juvenile case for his acts as a 16-year-old has continued well past its lawful termination. S.G.-H.M. respectfully requests that the Court hold the youth court failed to transfer jurisdiction to district court and lost jurisdiction of this matter on S.G.-H.M.’s 25th birthday in 2015, or, alternatively, lacked authority over the 2017 revocation petition due to the expiration of the EJPA sentence due to proper credit. Alternatively, S.G.-H.M. requests the

Court remand the case to the lower court with instructions to enter an amended judgment adding 220 days of street time credit to the January 29, 2019 revocation judgment.

Respectfully submitted this 20th day of August, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary 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 7,039, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Kristen L. Peterson
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APPENDIX

Judgment on Amended Third Petition for Revocation of
Suspended Sentence.....App. A

Order Re: Motion to Dismiss.....App. B

CERTIFICATE OF SERVICE

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