

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0123

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

JASON HARRISON,

Defendant and Appellant.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana Fifth Judicial District Court,  
Jefferson County, The Honorable Luke Berger, Presiding

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF THE ISSUE ..... 1

STATEMENT OF THE CASE ..... 1

STATEMENT OF THE FACTS ..... 5

I. Change-of-plea hearing.....5

II. Motion to withdraw guilty plea hearing .....8

SUMMARY OF THE ARGUMENT .....11

ARGUMENT.....12

I. The standard of review.....12

II. The district court properly denied Harrison’s motion to withdraw his guilty pleas after correctly concluding that Harrison voluntarily entered his guilty pleas .....13

A. Introduction .....13

B. Harrison failed to meet his burden to prove that his pleas were not voluntarily entered .....14

1. The record establishes that Harrison understood the direct consequences of his pleas .....15

2. Harrison failed to prove his counsel was ineffective .....19

CONCLUSION .....21

CERTIFICATE OF COMPLIANCE.....22

## TABLE OF AUTHORITIES

### Cases

<i>Brady v. United States</i> , 397 U.S. 742 (1970) .....	13
<i>McGarvey v. State</i> , 2014 MT 189, 375 Mont. 495, 329 P.3d 576 .....	19, 20
<i>State v. Faber</i> , 2008 MT 368, 346 Mont. 449, 197 P.3d 941 .....	17
<i>State v. Green</i> , 2015 MT 1, 378 Mont. 1, 340 P.3d 551 .....	12
<i>State v. Hendrickson</i> , 2014 MT 132, 375 Mont. 136, 325 P.3d 694 .....	14, 15
<i>State v. McFarlane</i> , 2008 MT 18, 341 Mont. 166, 176 P.3d 1057 .....	14, 15
<i>State v. Prindle</i> , 2013 MT 173, 370 Mont. 478, 304 P.3d 712 .....	12, 13, 17, 18
<i>State v. Robinson</i> , 2009 MT 170, 350 Mont. 493, 208 P.3d 851 .....	13
<i>State v. Valdez-Mendoza</i> , 2011 MT 214, 261 Mont. 503, 260 P.3d 151 .....	14
<i>State v. Warclub</i> , 2005 MT 149, 327 Mont. 352, 114 P.3d 254 .....	13
<i>State v. Williams</i> , 2010 MT 58, 355 Mont. 354, 228 P.3d 1127 .....	14
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984) .....	14, 19, 20
<i>Whitlow v. State</i> , 2008 MT 140, 343 Mont. 90, 183 P.3d 861 .....	19, 20

### Other Authorities

<u>Montana Code Annotated</u> § 46-16-105(2) .....	13
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## **STATEMENT OF THE ISSUE**

Whether the district court properly denied Appellant's motion to withdraw his guilty pleas after it correctly concluded that Appellant did not establish good cause to withdraw his pleas.

## **STATEMENT OF THE CASE**

By Amended Information, the State charged Appellant Jason Harrison with one count of felony Deviate Sexual Conduct, two counts of misdemeanor Violation of an Order of Protection, six counts of felony Violation of an Order of Protection, two counts of felony Attempt/Violation of an Order of Protection, and one count of Attempt/Tampering with a Witness. (D.C. Doc. 5.) On July 13, 2018, the parties entered into a plea agreement. (D.C. Doc. 25, attached as App. A.)

Harrison agreed to plead guilty to two counts of misdemeanor Violation of an Order of Protection, three counts of felony Violation of an Order of Protection, and one count of felony Attempt/Tampering with a Witness. (App. A. at 1.) The State agreed to move to dismiss the remaining charges and to recommend that for the misdemeanor offenses the court impose a sentence of six months in jail with all but time served suspended; two years to the Department of Corrections (DOC) on the first count of felony Violation of an Order of Protection to run concurrent to the misdemeanor sentences; two years to the DOC on the second count of felony

Violation of Order of Protection to run consecutive to the misdemeanor sentences; one year to the DOC on the third count of felony Violation of an Order of Protection, consecutive, and ten years to the DOC suspended, consecutive. (App. A at 2, 5.)

In signing the plea agreement, Harrison acknowledged:

I the undersigned Defendant, after full discussion of the charges(s) and penalties with my defense counsel, and after being fully advised of my rights to a jury trial, my understanding of my right to persist in my plea of not guilty and to demand a jury trial, do hereby accept the above offer and agree to enter plea(s) of guilty to the charge(s) specified. I hereby knowingly waive all objections to any substantive defect in said charge(s) and my right to a jury trial on the charge(s). I further understand that the offer made by the State is dependent upon the accuracy of my criminal history as I have represented it. My criminal history is as set out in the State's file. *I understand that the Court is not bound by this Agreement and may impose the maximum penalty for the offense(s) charged.*

(App. A at 6; emphasis added.)

On July 18, 2018, the district court held a change-of-plea hearing and accepted Harrison's guilty pleas entered pursuant to the plea agreement. (7/18/18 Change-of-Plea Hearing Transcript [Plea Change Tr.]; D.C. Doc. 24.) Defense counsel Gabriel Valentine submitted a Sentencing Memorandum. (D.C. Doc. 29.) The district court held a sentencing hearing on September 26, 2018. (9/26/18 Transcript of Sentencing Hearing [Sent. Tr.]) For the two misdemeanor offenses of Violation of a Protection Order, the court sentenced Harrison to six months in jail, suspended. (D.C. Doc. 31, attached to Appellant's Br. as App. A, at 2.) For the

three felony offenses of Violation of a Protection Order, the court sentenced Harrison to a total of four years in prison. For the felony offense of Attempt/Tampering with a Witness, the court sentenced Harrison to five years in prison. The court ordered that all the sentences run consecutively. (*Id.*)

On November 5, 2018, Harrison applied for a reduction of his sentence with the Sentence Review Division. (D.C. Doc. 34.) On March 29, 2019, the Sentence Review Division affirmed Harrison's sentence. (D.C. Doc. 40, attached as App. B.) On May 31, 2019, Harrison filed a motion seeking to withdraw his guilty pleas, a supporting brief, and affidavits from himself and his mother. (D.C. Docs. 41-44.) In his affidavit, Harrison claimed that Valentine pressured him into accepted a plea agreement rather than going to trial. (D.C. Doc. 43 at 1.) Harrison alleged that because of Valentine's overall conduct, he had no confidence in his ability to represent him at trial. (*Id.* at 2.) Harrison claimed that Valentine had specifically induced him to plead guilty by repeatedly assuring him that there was no chance the district court would sentence him to prison. (*Id.*) Harrison's mother Karen's affidavit alleged that Valentine had assured her and Harrison that if Harrison pled guilty he would receive a probationary sentence. (D.C. Doc. 44.)

The State filed a brief in opposition to Harrison's motion, and Harrison replied. (D.C. Docs. 54, 55.) Valentine, who represented Harrison at the change-of-

plea hearing and the sentencing hearing, also filed an affidavit denying Harrison's assertions against him. (D.C. Doc. 48, attached as App. C.)

In his affidavit, Valentine explained that he represented Harrison from January 9, 2018 through Harrison's sentencing hearing. (App. C ¶ 1.) Valentine detailed his meetings with Harrison, including discussions about the Order of Protection Harrison's wife had obtained against him. Valentine explicitly instructed Harrison that under no circumstances should he, either directly or through a third party, contact or attempt to contact his wife. (App. C ¶¶ 3-4.) Harrison expressed a desire to take his case to trial on at least one occasion, but Harrison frequently vacillated between proceeding to trial and accepting a plea agreement. Valentine discussed this with Harrison, informed Harrison of the strengths and weaknesses in the State's case, and discussed defenses/lack of defenses to the charges. (App. C ¶¶ 7-8.) Valentine and Harrison discussed possible trial strategy, and Valentine answered Harrison's questions to the best of his ability. (*Id.* ¶ 8.) Until the parties reached a plea agreement, Valentine prepared Harrison's case as if it would proceed to trial. (*Id.*)

Valentine reviewed the proposed plea agreement with Harrison in person. Valentine went through the proposed plea agreement with Harrison line by line and answer Harrison's questions. Valentine never pressured or coerced Harrison into accepting and signing the plea agreement. Harrison repeatedly asked Valentine for

assurances and predictions about the sentence the district court would impose. Although Valentine told him he thought it was unlikely the court would sentence him to prison, it was possible. Valentine unequivocally told Harrison that he could not and would not give him any assurances about the sentence the court would impose. Valentine repeatedly advised Harrison that the court was not bound by the plea agreement or by the parties' sentencing recommendations. Valentine never informed Harrison that there was "no chance" that the district court would sentence him to prison or the DOC. (App. C ¶¶ 10-12.)

On September 18, 2019, the district court held a hearing on Harrison's request to withdraw his guilty pleas. (9/18/19 Transcript of Hearing [Tr.].) The district court denied Harrison's motion to withdraw his guilty pleas. (D.C. Doc. 57, attached to Appellant's Br. as App. B.) The district court concluded that Harrison had voluntarily entered his guilty pleas pursuant to a plea agreement that was beneficial to him and concluded that Harrison had effective representation regarding the negotiated plea agreement and Harrison's entry of his guilty pleas. (*Id.*)

## **STATEMENT OF THE FACTS**

### **I. Change-of-plea hearing**

Before informing Harrison of the rights he would be waiving if he pled guilty, the court asked Harrison if he had had the chance to go over the plea

agreement line by line. Harrison responded, “Yes.” (Plea Change Tr. at 4.) Harrison assured the court that he had had the opportunity to ask his attorney all the questions he had about the plea agreement, and that he understood the plea agreement. When the court asked Harrison if he understood that the district court was not bound by the plea agreement, Harrison again responded, “Yes.” (Plea Change Tr. at 5.) The court made certain that Harrison understood that the court was only bound by the applicable sentencing statutes and could sentence Harrison in accord with those statutes. (*Id.*)

The court explicitly informed Harrison:

Okay. So, before entering your plea, I must advise you of the following rights: You’re entitled to a fair, speedy and impartial trial by jury. At trial, the State must prove the charges against you beyond a reasonable doubt. Upon conclusion of the trial, you would have the right to appeal that verdict to the Montana Supreme Court. You also have the right to confront your accusers and to cross-examine any witnesses who might testify against you. You have the right to produce any witness to testify on your behalf.

Mr. Harrison, you have the right to remain silent and refuse to testify and refuse to answer any questions that may tend to incriminate you.

(*Id.* at 5-6.) The court also discussed lesser included offenses with Harrison to make certain Harrison understood that if he proceeded to trial the jury might find him guilty of a less serious offense. (*Id.* at 7.) Harrison assured the court that he had had adequate time to discuss all these matters with defense counsel. (*Id.* at 7-8.)

Harrison told the court he was satisfied with Valentine's representation, and Valentine stated that he was satisfied that Harrison understood his rights. (*Id.* at 8-9.) Harrison assured the court that he had not been threatened, coerced, or promised any benefit in exchange for his guilty pleas other than the terms contained within the plea agreement. (*Id.* at 9.) The following exchange occurred between the court and Harrison:

THE COURT: No one – So, no one said anything to you outside of what's written in here.

THE DEFENDANT: No.

THE COURT: "Plead guilty and we'll do this special thing," no one's said anything like that to you?

THE DEFENDANT: No.

THE COURT: No one's forcing you to plead guilty?

THE DEFENDANT: No.

(*Id.* at 9-10.)

After Harrison provided a factual basis for his guilty pleas, the court accepted Harrison's guilty pleas, stating:

Okay. That's sufficient for the court as well. I find that Mr. Harrison is acting under the advice of competent counsel, that he fully understands his charges against him, the punishment and consequences, and that he's not under any physical, mental or emotional defect or disability that causes him not to understand these proceedings, nor is he under the influence of drugs or alcohol today. I find that he's competent to aid in his own defense and that no threats

or promises have been made to him to induce his admissions. And that he understands his constitutional rights.

I find that he freely and voluntarily waived those rights and that he knowingly, voluntarily and intelligently entered pleas of guilty.

*(Id.* at 15-16.)

## **II. Motion to withdraw guilty plea hearing**

At the hearing on Harrison's motion to withdraw his guilty pleas, he claimed that he had always wanted to go to trial, but Valentine had informed him that he would only "plea bargain" Harrison's case. (Tr. at 10-11.) Harrison claimed he felt pressured into pleading guilty because Valentine had not prepared for trial "at all."

*(Id.* at 12.) Harrison claimed to never have discussed trial strategy, potential witnesses, or possible defenses with Valentine. *(Id.* at 15.)

Harrison also claimed that Valentine coerced him into pleading guilty by repeatedly promising him that he would get probation and there was no way the court was going to send him to prison. *(Id.* at 22-23.) Harrison alleged that Valentine gave him these assurances between 8 to 12 times. *(Id.* at 28.) Harrison further claimed that he only saw a rough draft of the plea agreement and Valentine only hurriedly explained it to him. *(Id.* at 23.) Harrison claimed that on the day he entered his guilty pleas, Valentine only briefly talked with him in the back of the courtroom. *(Id.* at 24.) Harrison stated that, even though at the change-of-plea hearing the judge informed him the court was not bound by the plea agreement, he

was not concerned because Valentine had repeatedly assured him the court would not impose prison time, and instead would impose a probationary sentence. (*Id.* at 28.)

Harrison acknowledged that pursuant to the plea agreement the State moved to dismiss 6 of the 12 charges it had alleged against him in the Amended Information, which significantly reduced his criminal liability. (*Id.* at 35.) Harrison insisted that, despite the wording of the plea agreement regarding the State's sentencing recommendation, Valentine had assured him that he had worked everything out with the prosecutor. (*Id.* at 55.)

Harrison's mother Karen testified that through her conversations with Valentine she had been under the impression that if Harrison accepted the plea agreement the court would not sentence him to prison. (*Id.* at 70.)

Valentine testified that he worked at the Office of the Public Defender and was appointed to represent Harrison. He met Harrison for the first time on January 17, 2018. During Valentine's first in-person meeting with Harrison at the detention center, Harrison showed Valentine a temporary order of protection his wife had procured against him. Valentine explained that Harrison could not have any contact with his wife whatsoever, both because of the temporary order of protection and because the court had also made no contact a condition of any release order, assuming Harrison posted bail. (*Id.* at 92.)

Valentine estimated that he personally met with Harrison between six to eight times and spoke with him numerous times over the telephone. (*Id.* at 93.) He also spoke with Karen on a few occasions. Valentine never promised Harrison or Karen that the court would not impose a prison sentence. (*Id.* at 93.) Valentine is always willing to take a case to trial if a defendant wishes to proceed to trial. This is the defendant's decision to make. (*Id.* at 94.) In preparation for trial, Valentine reviewed all the discovery, interviewed Harrison on several occasions, interviewed the victim, and researched the law. (*Id.* at 96.)

Valentine reviewed the State's proposed plea agreement with Harrison at the jail and again before the change-of-plea hearing. Before Harrison signed the plea agreement, Valentine went through the agreement with him line by line. (*Id.* at 96-97.) Harrison understood that the State would be recommending that the court sentence Harrison to the DOC and that Valentine would be recommending a more lenient sentence. Harrison asked Valentine if the court would send him to prison. Valentine responded that he did not know but thought it unlikely. (*Id.*) Valentine believed he had explained to Harrison that by pleading guilty he was waiving his right to appeal. (*Id.* at 98.)

Valentine never told Harrison that he would not take Harrison's case to trial and would only remain on the case if Harrison accepted a plea agreement. (*Id.* at 99.) Harrison told Valentine that he was considering hiring private counsel.

Valentine explained that Harrison was welcome to do so but it might delay his case. (*Id.* at 100.)

Finally, Valentine denied Harrison's allegations that he had ever consumed alcohol while he was working, including during meetings with Harrison; that he had told Harrison he might have to admit to things that were untrue in order to get through the change-of-plea hearing; and that he had told Harrison any DNA evidence in his case had been or would be thrown away. (*Id.* at 99-100.)

### **SUMMARY OF THE ARGUMENT**

The district court properly denied Harrison's motion to withdraw his guilty pleas because the record establishes that Harrison received effective assistance of counsel and voluntarily entered his guilty pleas. Harrison accepted the benefit of a plea agreement that dismissed the most serious charge along with five other felonies. The record establishes that Harrison was aware that the State would be recommending the court impose a sentence to the DOC, that defense counsel would be recommending a deferred imposition of sentence, and that the district court was bound by neither recommendation and could sentence Harrison to prison.

Valentine never assured or promised Harrison that the district court would not impose a prison sentence. Valentine prepared for trial, presented the plea

agreement to Harrison, reviewed the plea agreement with Harrison line by line, informed Harrison of the strengths and weaknesses of the State's case, and left the decision to accept the plea agreement or proceed to trial with Harrison. Since the district court sent Harrison to prison, and the Sentence Review Division affirmed the district court's judgment, Harrison now believes he made the wrong decision. His regret does not equate to involuntary guilty pleas and this Court should affirm the district court's denial of Harrison's motion to withdraw his guilty pleas.

## ARGUMENT

### **I. The standard of review**

The ultimate question of whether a plea is voluntarily made is a mixed question of law and fact. *State v. Prindle*, 2013 MT 173, ¶ 16, 370 Mont. 478, 304 P.3d 712. This Court reviews a district court's ultimate grant or denial of a motion to withdraw a guilty plea de novo. *Id.* This Court reviews a district court's underlying factual findings regarding the voluntariness of the plea to determine if those findings are clearly erroneous. *Id.*

Ineffective assistance of counsel claims are mixed questions of law and fact, which this Court reviews de novo. *State v. Green*, 2015 MT 1, ¶ 11, 378 Mont. 1, 340 P.3d 551.

**II. The district court properly denied Harrison’s motion to withdraw his guilty pleas after correctly concluding that Harrison voluntarily entered his guilty pleas.**

**A. Introduction**

Montana law permits a defendant to withdraw his guilty plea within one year of final judgment for “good cause.” Mont. Code Ann. § 46-16-105(2). A defendant must enter a voluntary plea because the defendant is waiving his constitutional rights to not incriminate himself and to a jury trial. *Prindle*, ¶ 17, citing *Brady v. United States*, 397 U.S. 742, 748 (1970). Good cause for withdrawal of a guilty plea exists when a defendant’s guilty plea was involuntarily entered. *Prindle*, ¶ 17.

This Court uses the following standard from *Brady* to determine whether a defendant voluntarily entered a guilty plea:

A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor’s business.

*State v. Warclub*, 2005 MT 149, ¶ 18, 327 Mont. 352, 114 P.3d 254, quoting *Brady*, 397 U.S. at 755. The burden is on Harrison to show that his pleas were involuntarily entered. *State v. Robinson*, 2009 MT 170, ¶¶ 17-18, 350 Mont. 493, 208 P.3d 851.

Ineffective assistance of counsel can constitute good cause to withdraw a guilty plea. *State v. Valdez-Mendoza*, 2011 MT 214, ¶ 14, 261 Mont. 503, 260 P.3d 151. This Court applies the *Strickland* test to evaluate whether counsel's ineffectiveness impacted the voluntariness of a defendant's plea. *State v. Hendrickson*, 2014 MT 132, ¶ 16, 375 Mont. 136, 325 P.3d 694; *Strickland v. Washington*, 466 U.S. 668 (1984). To demonstrate good cause to withdraw his guilty plea, it was Harrison's burden to prove both prongs of *Strickland*. *State v. Williams*, 2010 MT 58, ¶ 35, 355 Mont. 354, 228 P.3d 1127. It was Harrison's burden to show: (1) that Valentine performed deficiently; and (2) but for Valentine's deficient performance, Harrison would not have entered his guilty pleas to half of the charges alleged in the Amended Information. *State v. McFarlane*, 2008 MT 18, ¶ 11, 341 Mont. 166, 176 P.3d 1057.

**B. Harrison failed to meet his burden to prove that his pleas were not voluntarily entered.**

Harrison urges that he proved good cause to withdraw his guilty pleas because he reasonably believed that the district court would not impose a prison sentence and because his counsel was ineffective. The district court properly denied Harrison's motion to withdraw his guilty pleas on both grounds.

**1. The record establishes that Harrison understood the direct consequences of his pleas.**

Determining whether a defendant entered a plea voluntarily and whether a district court erred in denying a motion to withdraw a plea requires case-specific considerations, including "the adequacy of the district court's interrogation, the benefits obtained from a plea bargain, the withdrawal's timeliness, and other considerations that may affect the credibility of the claims presented."

*Hendrickson*, ¶17, quoting *McFarlane*, ¶ 17. Harrison alleges that he did not understand the direct consequences of his pleas because his attorney repeatedly informed him that he would only get probation and the court would never send him to prison. (Appellant's Br. at 13-14.)

Harrison argues that his testimony and that of his mother at the hearing on his motion to withdraw his guilty pleas establish that (1) his defense counsel either negligently or intentionally misinformed him about his sentence, and (2) his defense counsel's conduct before and at the sentencing hearing somehow corroborates his testimony. Harrison ignores the plea agreement he signed, as well as the benefit he received from that plea agreement, the transcript of the change-of-plea hearing, and Valentine's affidavit and testimony. Based on Harrison's claim that his attorney repeatedly promised him that the court would impose a probationary sentence, the timing of his motion to withdraw his guilty pleas is also suspect.

In the plea agreement, it is evident that the State intended to recommend the court sentence Harrison to the DOC for five years with an additional ten years suspended. Additionally, the State agreed to seek dismissal of six charges alleged in the Amended Information. It is also clear that defense counsel intended to recommend the court defer imposition of Harrison's sentence.

In the acceptance section of the plea agreement, Harrison acknowledged that defense counsel had fully advised him of his rights, and that the court "is not bound by this Agreement and may impose the maximum penalty for the offense(s) charged." (App. A at 6.) At the conclusion of the plea agreement, defense counsel advised the court that he had advised Harrison the court might impose the maximum penalty. (*Id.*)

At the change-of-plea hearing, Harrison informed the court that he had had the opportunity to ask his attorney all his questions regarding the plea agreement. (Plea Change Tr. at 5.) Harrison also told the court that he understood the court was not bound by the agreement. (*Id.*) Harrison assured the court that he was satisfied with the services of his attorney, and that he had not been "coerced, threatened or promised any benefit" other than what was contained within the plea agreement. (*Id.* at 8-9.)

After the district court imposed its sentence, Harrison did not move to withdraw his guilty plea. Instead, Harrison applied for sentence review. It was only

after the Sentence Review Division affirmed Harrison's sentence that he moved to withdraw his guilty plea. The timing of Harrison's motion does not ring true with the claim he made—that Valentine repeatedly assured him that the court would impose a probationary sentence. If that were the case, it would have been more likely for Harrison to move to withdraw his guilty plea immediately after sentencing.

Valentine emphatically denies that he assured Harrison the court would impose a probationary sentence and that there was no chance the court would sentence Harrison to prison. Valentine repeatedly refused to give Harrison such assurances. The district court determined that Valentine's testimony was more credible than Harrison's testimony. Because weight and credibility determinations rest with the trier of fact, this Court does not disturb those determinations on appeal. *State v. Faber*, 2008 MT 368, ¶ 28, 346 Mont. 449, 197 P.3d 941.

Valentine did explain to Harrison that, in his estimation, a prison sentence was unlikely because of Harrison's lack of a criminal record, but Valentine also cautioned that it was not out of the question. Harrison now attempts to use Valentine's candor to show that Valentine misled him. Harrison cites *Prindle* to support his position. *Prindle* does not help Harrison's position.

In *Prindle*, this Court explained that an erroneous prediction by defense *can* rise to the level of misrepresentation, but *not all* erroneous predictions by defense

counsel rise to the level of misrepresentation. *Prindle*, ¶ 29. In *Prindle* the Court concluded that, even assuming defense counsel predicted that Prindle would be allowed to immediately serve his probationary sentence in Oregon, the erroneous prediction did not rise to the level of a gross mischaracterization of the likely outcome. *Id.* ¶ 32.

Here, Valentine's estimation that a prison sentence was unlikely, based upon Harrison's lack of a criminal record, was neither unreasonable nor a gross mischaracterization of the likely outcome. Also, Valentine tempered his estimation with a caution that a prison sentence was still possible. Both the plea agreement and the district court's statement at the change-of-plea hearing made this clear. Harrison assured the court in writing that, other than the terms of the plea agreement, no one had made any promises or commitments to him.

Finally, Harrison attempts to argue that Valentine clearly believed the court would defer imposition of sentence and order probation because he did little to support his deferred imposition of sentence recommendation. To the contrary, Valentine filed a sentencing memorandum in which he highlighted that Harrison was 44 years old and had no criminal history. (D.C. Doc. 29 at 3.) Valentine also urged the court not to sentence Harrison based on unsubstantiated allegations. (*Id.*)

Finally, Valentine highlighted the factual basis of each offense to which Harrison pled guilty to demonstrate that the Violation of a Protection Order

offenses were based on Harrison contacting or attempting to contact his wife by telephone or through third parties. (*Id.* at 2.) Valentine elaborated that Harrison had been married to the victim for 18 years. For the first time in his life, Harrison was incarcerated, which was “a shock to his physical, mental, and emotional well-being.” (*Id.* at 3.) Harrison attempted to contact his wife during a heightened state of anxiety and acknowledged that his actions were wrong. (*Id.*) Valentine also strongly advocated for a deferred imposition of sentence at the sentencing hearing. (Sent. Tr. at 30-33.)

Harrison failed to meet his burden of proving that his guilty pleas were involuntarily entered, and the district court properly denied his motion to withdraw his guilty pleas on this ground.

**2. Harrison failed to prove his counsel was ineffective.**

Under *Strickland*'s first prong, this Court examines whether counsel's conduct fell below an objective standard of reasonableness considering prevailing professional norms, and in the context of all circumstances. *McGarvey v. State*, 2014 MT 189, ¶ 25, 375 Mont. 495, 329 P.3d 576. Counsel's conduct is strongly presumed to be within professional norms, and a defendant must “identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” *Whitlow v. State*, 2008 MT 140, ¶ 16, 343 Mont. 90, 183 P.3d 861, quoting *Strickland* at 690. Counsel's decisions related to presenting

a case, including whether to introduce evidence or produce witnesses, generally constitute trial tactics and strategy, and this Court “will not find ineffective assistance of counsel in such tactics.” *McGarvey*, ¶ 25.

There is “a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Whitlow*, ¶ 15, quoting *Strickland*, 466 U.S. at 689. Further, when evaluating counsel’s performance, the reviewing court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Whitlow*, ¶ 31, quoting *Strickland*, 466 U.S. at 689.

Harrison failed to prove that Valentine’s performance was deficient. Again, Harrison argues that Valentine gave him repeated assurances he would not go to prison. As set forth above, the record simply does not bear out Harrison’s accusation. Harrison also states that Valentine told him trial was not an option and he had to enter into a plea agreement. Valentine steadfastly denied these allegations. Valentine took steps to prepare for trial and clearly understood that the decision to proceed to trial or accept a plea agreement rested on Harrison’s shoulders. The district court properly found Valentine’s testimony more credible than Harrison’s testimony.

Harrison was plainly unhappy with the sentence the court imposed, but his unhappiness does not equate to involuntary pleas based on ineffective assistance of counsel. Valentine negotiated a plea agreement on Harrison's behalf that resulted in dismissal of the most serious charge, along with dismissal of five other felony offenses. The plea agreement greatly reduced Harrison's criminal liability. Under these circumstances the district court properly denied Harrison's motion to withdraw his guilty pleas.

### **CONCLUSION**

The State respectfully requests that the Court affirm the district court's order denying Harrison's motion to withdraw his guilty pleas.

Respectfully submitted this 25th day of September, 2020.

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 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 4,760 words, excluding cover page, table of contents, table of authorities, signatures, certificate of service, certificate of compliance, and appendices.

*/s/ Tammy K Plubell*  
\_\_\_\_\_  
TAMMY K PLUBELL

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0123

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

JASON HARRISON,

Defendant and Appellant.

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**APPENDICES**

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7/18/18 Plea Agreement (D.C. Doc. 25.)..... Appendix A  
3/29/19 Sentence Review Division Decision (D.C. Doc. 40.) .....Appendix B  
7/19/19 Gabriel Valentine Affidavit (D.C. Doc. 48) .....Appendix C

## **CERTIFICATE OF SERVICE**

I, Tammy Plubell, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-25-2020:

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