IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0041

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ERIC D. YEATON,

Defendant and Appellant.

REDACTED BRIEF OF APPELLANT

On Appeal from the Montana Nineteenth Judicial District Court,
Lincoln County, the Honorable Matthew J. Cuffe, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Montana Code Annotated

Rules

Other Authorities

STATEMENT OF THE ISSUES

1. Prior to ordering a defendant to pay the costs of his imprisonment, probation, and alcohol treatment, a district court must make specific findings that the defendant will be able to pay. Did the district court err when it ordered Eric Yeaton to pay for his imprisonment, probation, and alcohol treatment "if financially able" without making an actual finding on Mr. Yeaton's ability to pay?

2. A district court cannot order a defendant to pay court fines and fees from his social security benefits. Did the district court err when it ordered Mr. Yeaton to pay $5,560 in a fine, a surcharge, and fees from his $550 social security benefits when the fine, surcharge, and fees were not statutorily mandated?

STATEMENT OF THE CASE

Mr. Yeaton pled guilty to felony operation of noncommercial vehicle by a person with blood alcohol concentration of .08 or more ("BAC"). (Tr. at 15.) At sentencing, Mr. Yeaton objected to several financial conditions recommended in the presentence investigation report ("PSI"). (Tr. at 23-25.) The court overruled the objections and imposed the conditions. (Tr. at 28-29, attached as App. A; D.C. Doc. 33 at 3-5, attached as App. B.) The court sentenced Mr. Yeaton to the Department of Corrections ("DOC") for five years with two years suspended. (Tr. at 28-29; D.C. Doc. 33 at 2.) Mr. Yeaton timely appealed. (D.C. Doc. 36.)

STATEMENT OF THE FACTS

Pursuant to a plea agreement, Mr. Yeaton agreed to plead guilty to felony BAC. (D.C. Doc. 19 at 1.) The parties agreed to recommend a sentence to the DOC for five years with two years suspended. (D.C. Doc. 19 at 1.) The parties made no agreement regarding fines or fees. (D.C. Doc. 19 at 1-3.)

The court accepted Mr. Yeaton's guilty plea and ordered a PSI. (Tr. at 16.) [redacted] (D.C. Doc. 29 at 2; *see* Tr. at 19.)[1] [redacted] (D.C. Doc. 29 at 13.)

[1] The PSI is a confidential document that is not accessible to the public. Mont. Code Ann. § 46-18-113(1). Pursuant to Mont. R. App. P. 10(7), Mr. Yeaton has redacted from the publicly filed version of this brief information cited solely from the PSI.

At sentencing, pursuant to the plea agreement, the State and Mr. Yeaton recommended a five-year DOC sentence with two years suspended. (Tr. at 22-23.) The parties supported their recommendation by informing the court that Mr. Yeaton was previously placed in a residential treatment facility for a past felony DUI conviction, indicating the penalties provided in Mont. Code Ann. § 61-8-731(3) for a fifth BAC offense applied. (Tr. at 22-23.)

Mr. Yeaton objected to the financial conditions contained in the PSI, arguing he simply could not pay them. (Tr. at 23-26.) With respect to the condition requiring Mr. Yeaton pay the costs of imprisonment, probation, and alcohol treatment for his five-year DOC sentence, Mr. Yeaton informed:

> [Number] 28 I realize that it says "if financially able" as a cost of probation to pay the cost of imprisonment, we would ask—he's not financially able so we would ask that #28 be struck.

(Tr. at 24.) The court did not ask Mr. Yeaton any questions regarding his financial situation, his ability to work, his health, his education, or anything else that would help the court assess Mr. Yeaton's ability to pay. (Tr. at 23-30.) Likewise, the court did not inquire as to the financial hardship that imposing the costs would create. (Tr. at 23-30.)

Mr. Yeaton also objected to the recommended $5,000 fine and the various surcharges, costs, and fees on the basis that the only way he could pay them would be from his social security income, and that federal and state law prohibit the court from taking these protected funds:

> [DEFENSE COUNSEL]: One of the things that Mr. Yeaton struggles with is obviously paying for things. His income is $550. So, obviously, all of the fines and fees I am asking to be waived. 13 B, C, D, E, F, G and H. He gets social security and he cannot afford those.
>
> . . .
>
> B, C, D, E, F, G and H. We would ask that all of those be struck considering his income.
>
> THE COURT: Now G is the mandatory fine?
>
> [DEFENSE COUNSEL]: Yes, Your Honor, but I believe that the federal law overrides that requirement of that fine. So I don't believe that Montana State can take his social security disability of $550 for that.

(Tr. at 23-25.) The court asked whether the issue of taking a defendant's social security income to pay for a fine had "been litigated anywhere." (Tr. at 25.) Mr. Yeaton pointed to this Court's decision in *State v. Eaton*[2], which "covers that you can't take someone's federal income for State fines and fees." (Tr. at 25-26.) The State responded that it was "not well

[2] *State v. Eaton*, 2004 MT 283, 323 Mont. 287, 99 P.3d 661.

versed" with *Eaton* but acknowledged that a court cannot order a defendant to use social security funds to pay court costs. (Tr. at 27-28.) Nonetheless, the State opposed waiving most of the fines, surcharges, costs, and fees because it believed they were mandatory under State law. (Tr. at 27-28.)

The court followed the plea agreement and sentenced Mr. Yeaton to the DOC for five years with two years suspended. (Tr. at 28-29; D.C. Doc. 33 at 2.) Despite that Mr. Yeaton's only source of income was $550 in social security and despite that he had no assets, the district court imposed nearly all the recommended financial conditions. The court ordered the condition requiring Mr. Yeaton pay the costs of his imprisonment, probation, and alcohol treatment "if financially able." (Tr. at 29; D.C. Doc. 33 at 5.) The court did not make a single finding regarding whether Mr. Yeaton would be able to pay the costs but imposed the condition because it "is self-explanatory." (Tr. at 29.) The court also ordered Mr. Yeaton to pay the $5,000 fine, the $500 surcharge, a $50 victim and witness advocacy surcharge, and a $10 court information technology fee. (Tr. at 29; D.C. Doc. 33 at 3-4.) The court did not explicitly disagree with Mr. Yeaton's reliance on *State v. Eaton*; however,

the court ordered the condition because it believed the fine was "statutorily mandated." (Tr. at 29.)

SUMMARY OF THE ARGUMENT

The district court illegally ordered Mr. Yeaton to pay the costs of imprisonment, probation, and alcohol treatment for his five-year DOC sentence when it made no findings that Mr. Yeaton would be able to pay. A court is only authorized to impose such costs if it inquires into the defendant's financial situation and makes specific findings that the defendant will be able to pay the costs. Although the court can authorize the DOC to reassess the defendant's ability to pay at a later date when the specific costs are better known, it must first make its own finding before imposing the costs in its sentence. Here, the court imposed the condition without making any finding that Mr. Yeaton would be able to pay the costs of his imprisonment, probation, and alcohol treatment and when the record established that Mr. Yeaton likely would *not* be able to pay. The Court must remand for the district court to inquire of Mr. Yeaton's financial situation and make specific findings regarding Mr. Yeaton's ability to pay.

In addition, the district court illegally ordered Mr. Yeaton to pay $5,560 in a fine, a surcharge, and fees out of Mr. Yeaton's social security disability income. Federal and state law prohibit a court from ordering a defendant to pay court costs from social security benefits. Despite being informed that the only money Mr. Yeaton had to satisfy court-imposed costs was protected social security income, the court ordered the $5,560 because it erroneously believed the fine and surcharge were statutorily mandatory. They were not. The fine, surcharge, and fees were discretionary, and the court's decision to impose them conflicted with federal and state law.

STANDARD OF REVIEW

The Court reviews a criminal sentence for legality only, ascertaining whether the sentence falls within the statutory parameters. *State v. Mingus*, 2004 MT 24, ¶ 10, 319 Mont. 349, 84 P.3d 658.

ARGUMENT

I. The district court erred by ordering Mr. Yeaton to pay the costs of his imprisonment, probation, and alcohol treatment without finding that he would be able to pay.

A defendant can only be required to pay the costs of imprisonment, probation, and alcohol treatment if he is financially able to do so. *Mingus*,

¶ 22. Montana Code Annotated § 61-8-731(4) provides that when sentencing a defendant convicted of felony BAC:

> The court shall, as a condition of probation, order:
>
> . . .
>
> (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section . . . .

Mont. Code Ann. § 61-8-731(4). This Court has held that it is the district court's responsibility to "make *specific findings* to determine whether [the defendant] is financially able to pay these costs." *Mingus*, ¶¶ 21-23 (emphasis added).

In *Mingus*, the district court imposed a probationary condition that required Mingus to pay the costs of aftercare treatment upon his conviction for felony DUI. *Mingus*, ¶¶ 4-6. On appeal, the Court emphasized that Mont. Code Ann. § 61-8-731(3)(b) (now Mont. Code Ann. § 61-8-731(4)(b)) allows for the imposition of such costs only if the defendant is financially able to pay them. *Mingus*, ¶¶ 19, 22. As such, the district court had a duty to make "a separate inquiry into whether Mingus would be able to pay any costs imposed or whether such payment might cause a hardship." *Mingus*, ¶ 21. Although the lower court

considered Mingus's PSI during sentencing, which reflected Mingus's debts, assets, and employment and income information, it did not make a separate inquiry into whether Mingus would be able to pay costs of treatment or whether such payment would cause a hardship. *Mingus*, ¶ 21. And, as here, although the written judgment specified that the condition applied only if Mingus was "financially able" to pay, this Court held the lower court "still did not make the requisite findings regarding Mingus's ability to pay" for treatment. *Mingus*, ¶¶ 7, 23. The court's failure to inquire and make "specific findings" regarding Mingus's financial ability to pay violated Mont. Code Ann. § 61-8-731(3)(b). *Mingus*, ¶¶ 19-24.

Recently, in *State v. Daricek*, 2018 MT 31, ¶¶ 14, 17-18, 390 Mont. 273, 412 P.3d 1044, this Court held that a district court can impose the costs of imprisonment, probation, and alcohol treatment contingent upon the DOC's future determination of the defendant's continued ability to pay *if* the district court first makes "specific findings" that the defendant will be financially able to pay the costs. In *Daricek*, the district court made "specific findings" that Dericek was "fit [and] able to work," that he had a GED and was employed, that he was in good health, and that he

could "earn money to pay off" any costs. *Daricek*, ¶ 17. Unlike the court in *Mingus*, that made no findings of Mingus's future likelihood of being able to pay the costs, the district court "made a specific finding"—supported by the evidentiary record—that "Daricek likely would be able to work upon release from custody" and therefore pay the costs. *Daricek*, ¶ 17. Because the specific costs of Daricek's future imprisonment, probation, and alcohol treatment were unknown at the time of sentencing, as was Daricek's exact, future employment status, the Court held it was permissible for the district court to authorize the DOC to reassess Daricek's ability to pay later on and relieve him of the requirement if he was unable to pay. *Daricek*, ¶¶ 11, 13, 18. However, it was only because the district court first made the "specific finding" that Daricek likely would be able to pay the costs that the Court upheld the condition. *Daricek*, ¶¶ 17-18. The Court affirmed "the court's conclusion that [Daricek] could be held responsible to pay costs so long as he *remained* financially able to do so." *Daricek*, ¶¶ 17-18 (emphasis added).

Here, as in *Mingus*, the district court ordered Mr. Yeaton to pay his costs of imprisonment, probation, and alcohol treatment without making specific findings regarding his ability to pay. Unlike the court in *Daricek*,

that found Daricek was "fit [and] able to work," that he had a GED and was employed, that he was in good health, and that he could "earn money to pay off" the costs, the court here did not make a single finding that it was likely Mr. Yeaton would be able to pay the costs. *See Daricek*, ¶ 17. The court did not ask Mr. Yeaton any questions regarding his financial situation, his ability to work, his health, his education, or anything else that would help the court assess whether Mr. Yeaton likely would be able to pay the costs of his imprisonment, probation, and alcohol treatment. (Tr. at 23-30.) The court did not inquire as to the financial hardship that imposing the costs would create. (Tr. at 23-30.) Without making any findings regarding Mr. Yeaton's ability to pay the costs, the court imposed the condition because it "is self-explanatory." (Tr. at 29.)

The district court violated Mont. Code Ann. § 61-8-731(4)(b). *Mingus*, ¶¶ 19-24; *Daricek*, ¶ 18. The court could only order Mr. Yeaton to pay for the cost of imprisonment, probation, and alcohol treatment if the court made a specific finding that Mr. Yeaton likely would be financially able to pay the costs. *Mingus*, ¶ 21; *Daricek*, ¶¶ 17-18. Even though the court specified that the condition applied only if Mr. Yeaton was "financially able" to pay—and therefore the DOC could relieve Mr.

Yeaton from the requirement if the DOC later determined he was unable to pay—the court "still did not make the requisite findings" regarding Mr. Yeaton's ability to pay. *Mingus*, ¶¶ 7, 23; *see Daricek*, ¶¶ 17-18. Providing the DOC authority to relieve an obligation has nothing to do with the requirements for the district court to impose the obligation in the first place. Here, the district court imposed the obligation without the required finding.

Notably, the record does not support a finding that Mr. Yeaton will be able to pay the costs of imprisonment, probation, and alcohol treatment. [redacted] (D.C. Doc. 29 at 2.) Costs of imprisonment, probation, and alcohol treatment could exceed $100 per day. *See* Mont. Dept. of Corrections, *2019 Biennial Report* A-12 through A-15, http://cor.mt.gov/Portals/104/Resources/Reports/2019

BiennialReport.pdf.[3] The court sentenced Mr. Yeaton to the DOC for five years with two years suspended. (Tr. at 28-29.) The three years that Mr. Yeaton will spend incarcerated could cost him close to $100,000, on top of the probation and treatment costs incurred during the following two-year suspended sentence. Nothing in the record established that Mr. Yeaton "likely would be able" to pay these significant expenses for his five-year DOC sentence. *See Daricek*, ¶ 17.

Mr. Yeaton requests the Court remand for the district court to inquire into Mr. Yeaton's ability to pay and to make specific findings regarding whether Mr. Yeaton will be able to pay the costs of his five-year DOC sentence. *See Mingus*, ¶¶ 22-24.

II. The district court violated federal and state law when it ordered Mr. Yeaton to pay $5,560 in a discretionary fine, a discretionary surcharge, and discretionary fees from his social security disability income.

[3] Mr. Yeaton asks this Court to take judicial notice of the information provided in A-12 through A-15 of the Montana DOC 2019 Biennial Report. These documents, attached as App. C, provide offender costs per day during fiscal year 2018 at various correctional and treatment facilities in the State. *See* Mont. R. Evid. 201(b) (courts may take judicial notice of facts "not subject to reasonable dispute" in that they are "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned").

It is illegal for a district court to order a defendant to pay court fees from his social security disability. Federal law provides that "none of the moneys paid or payable . . . [under the Social Security Act] shall be subject to execution, levy, attachment, garnishment, or other legal process." 42 U.S.C. § 407(a). This law prohibits a court from ordering a defendant to pay legal costs from social security benefits; doing so constitutes an "other legal process" by which to reach the protected funds. *Eaton*, ¶¶ 19-23.

In *State v. Eaton*, when sentencing Eaton for theft, the district court ordered him to pay restitution out of his income, which included social security benefits. *Eaton*, ¶¶ 10, 23. On appeal, Eaton argued the condition violated 42 U.S.C. § 407(a). *Eaton*, ¶ 19. The Court agreed. The Court cited United States Supreme Court caselaw providing that "other legal process" is a "'term[] of art referencing to formal procedures by which one person gains a degree of control over property otherwise subject to the control of another, and generally involves some form of judicial authorization.'" *Eaton*, ¶ 21 (quoting *Washington State Dept. of Social and Health Services v. Guardianship*, 537 U.S. 371, 385 (2003)). The Court determined that the district court's restitution order "is an

improper attempt to subject Eaton's social security benefits to other legal process." *Eaton*, ¶ 22 (internal quotation marks omitted). In response to the State's argument that Eaton could simply "raise this defense at the time [the state] would seek a levy," the Court stated, "it is appropriate to eliminate the offending condition from the judgment in the first instance." *Eaton*, ¶ 22. The Court concluded "the judgment's inclusion of Eaton's social security income conflicts with the provisions of § 407(a)," and reversed the restitution order. *Eaton*, ¶ 23.

As in *Eaton*, the district court's order that Mr. Yeaton pay $5,560 in legal costs conflicts with 42 U.S.C. § 407(a) and must be reversed. It was undisputed in district court that Mr. Yeaton's only source of income was $550 in social security disability and that he had no assets. (D.C. Doc. 29 at 2; Tr. at 19, 23-25.) Like *Eaton*, where the record established that a portion of Eaton's social security would be used to satisfy the court's restitution order, here, the record established that Mr. Yeaton could only pay the $5,560 with social security income. The district court's order to pay $5,560 in legal costs was an order to use Mr. Yeaton's sole source of income—his social security disability—to satisfy his criminal judgment. As Mr. Yeaton argued below, ordering him to pay $5,560

illegally subjected his social security benefits to "other legal process" and violated federal and state law. *Eaton*, ¶ 22; 42 U.S.C. § 407(a).

The district court did not disagree with Mr. Yeaton's reliance on *Eaton*, but erroneously imposed the $5,560 on the grounds that it believed the $5,000 fine—and, presumably, its $500 surcharge—was mandatory. (Tr. at 29.) While this is true for a fourth or subsequent BAC offense when the defendant was *not* previously placed in a residential treatment program, it is not true for a fifth BAC offense when the defendant *was* previously placed in a residential treatment program. Montana Code Annotated § 61-8-731(3) is the penalty statute for a fifth BAC offense committed by a person who "was, upon a prior conviction, placed in a residential alcohol treatment program." Mont. Code Ann. § 61-8-731(3). The statute requires the person "be sentenced to the department of corrections for a term of not less than 13 months or more than 5 years *or* be fined an amount of not less than $5,000 or more than $10,000, or both." Mont. Code Ann. § 61-8-731(3) (emphasis added). Per the statute, the fine is discretionary, *not* mandatory. Mont. Code Ann. § 61-8-731(3). The penalty statute for a fourth or subsequent BAC offense when the defendant was *not* previously placed in a residential alcohol

treatment program is Mont. Code Ann. § 61-8-731(1), and authorizes a DOC sentence of up to two years followed by a suspended sentence of up to five years or, alternatively, a sentence to an appropriate treatment court program for a term of no more than five years, *and* a mandatory minimum fine of $5,000. Mont. Code Ann. § 61-8-731(1) (emphasis added).

While the record is admittedly somewhat unclear regarding whether the State initially prosecuted Mr. Yeaton for a fourth or a fifth BAC offense, the record is clear that the parties and the court agreed Mr. Yeaton would be sentenced under Mont. Code Ann. § 61-8-731(3), the penalty statute for a fifth BAC offense committed by a person who "was, upon a prior conviction, placed in a residential alcohol treatment program." Mont. Code Ann. § 61-8-731(3). The parties agreed to a DOC sentence of five years with two years suspended and informed the court that Mr. Yeaton was previously placed in a residential treatment facility for a prior felony DUI conviction, making Mont. Code Ann. § 61-8-731(3) the applicable sentencing statute, not § 61-8-731(1). (D.C. Doc. 19 at 1; Tr. at 22). [redacted] (D.C. Doc. 29 at 5.) The court accepted the plea agreement and imposed a DOC sentence of five years

with two years suspended. (Tr. at 28-29.) This sentence was lawful under Mont. Code Ann. § 61-8-731(3); the sentence would not have been lawful under § 61-8-731(1). Mont. Code Ann. §§ 61-8-731(1), (3). Contrary to the court's belief, however, the $5,000 fine was discretionary, *not* mandatory, under Mont. Code Ann. § 61-8-731(3). *See* Mont. Code Ann. § 61-8-731(3) (stating that the court could impose a DOC sentence *or* a fine *or* both).

In addition to the discretionary $5,000 fine, the remaining $500 surcharge and $60 in court technology fees and victim and witness advocate fees were likewise discretionary. *See* Mont. Code Ann. §§ 3-1-317(2), 46-18-236(2) (providing that the surcharge and fees are subject to the defendant's ability to pay).

The district court's order that Mr. Yeaton pay the discretionary $5,560 illegally burdens Mr. Yeaton's social security disability income. The fine, surcharge, and fees were not mandatory and violated federal and state law. The $5,560 must be struck from Mr. Yeaton's judgment. *See Eaton*, ¶ 23.

CONCLUSION

Mr. Yeaton respectfully requests the Court remand with instructions for the district court to make specific findings regarding his ability to pay the costs of his imprisonment, probation, and alcohol treatment, and to strike the $5,560 from Mr. Yeaton's judgment.

Respectfully submitted this 18th day of December, 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 3885, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Haley Connell Jackson
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APPENDIX

CERTIFICATE OF SERVICE

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