

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0041

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

ERIC D. YEATON,

Defendant and Appellant.

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**BRIEF OF APPELLEE**

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

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## **STATEMENT OF THE ISSUES**

1. Whether the district court erred by assessing the cost of imprisonment, probation, and alcohol treatment under Mont. Code Ann. § 61-8-731(4)(b).
2. Whether it was illegal under federal or state law for the district court to order Yeaton to pay a fine, charges, and a surcharge.

## **STATEMENT OF THE CASE**

In January 2019, Lincoln County charged Appellant Eric D. Yeaton (Yeaton) with multiple criminal violations, including felony driving under the influence of alcohol (DUI). (Doc. 4.) Yeaton entered into a plea agreement with the State and pleaded guilty to Mont. Code Ann. § 61-8-406(1)(a), operation of a noncommercial vehicle by a person with an alcohol concentration of .08 or more, fourth or subsequent offense (DUI per se). (Docs. 4, 19, 23.) The Montana Nineteenth Judicial District Court (district court) sentenced Yeaton to the Department of Corrections (DOC) for a period of five years, with two years suspended and gave four days credit for time served. The district court also ordered Yeaton to pay a fine, charges, and surcharge, totaling \$5,560, and, if financially able, the costs of his imprisonment, probation, and alcohol treatment. (Doc. 33.) Yeaton now challenges these financial obligations.

## STATEMENT OF THE FACTS

### **Offense**

On January 20, 2019, Montana Highway Patrol Trooper Katherine A. Trewick (Trooper Trewick) stopped a 2010 Ford Taurus driven by Yeaton for traveling 52 miles per hour in a 45 miles per hour zone. (Doc. 2 at 6.) Upon contact, Trooper Trewick observed that Yeaton smelled strongly of an alcoholic beverage, was slurring his words, and had bloodshot and watery eyes. (Doc. 2 at 6.) A female passenger was riding with Yeaton. (*Id.*) Yeaton stated he did not have a driver's license and Trooper Trewick confirmed that Yeaton's license expired in September 2016. (Doc. .50 at 8.)

Yeaton provided the vehicle's insurance and registration, and Trooper Trewick asked Yeaton if he was either of the names listed on either the insurance or registration because they bore different names. (Doc. 2 at 6.) Yeaton confirmed his identity and Trooper Trewick instructed him to remain in the vehicle. (Doc. 2 at 6-7.) As she was walking back to her vehicle, Trooper Trewick heard Yeaton utter, "Ya what the fuck ever ya fucking bitch." (Doc. 2 at 7.) After Trooper Trewick radioed dispatch, another law enforcement officer arrived, Officer Gibson of the Eureka Police Department, and they returned to Yeaton's vehicle to begin a DUI investigation. (*Id.*)

Trooper Trewick knocked on Yeaton's window and asked him to step out of the vehicle. (Doc. 2 at 7.) After Yeaton "kicked" his door open, Trooper Trewick pointed at her patrol vehicle, and requested that Yeaton walk to the front of it. (*Id.*) Yeaton walked towards Trooper Trewick, placed his hands in his pockets, and glared at her. (*Id.*) Trooper Trewick noted that she was clearly able to see that Yeaton's eyes were glossy. (*Id.*) Trooper Trewick conducted a pat down search of Yeaton for weapons and his female passenger exited the vehicle. (*Id.*) The female passenger was instructed to return to the vehicle and was walked back to the vehicle by Officer Gibson. (*Id.*) Officer Gibson asked the female passenger for identification and Yeaton stated, "You don't need her ID." (*Id.*)

Yeaton became verbally aggressive with Trooper Trewick and began using profanities. (*See* Doc. .50 at 8; Doc. 2 at 7 (Yeaton yelling at one point, "Go fuck yourself").) Following Yeaton's refusal to perform standardized field sobriety tests, Trooper Trewick requested that he place his hands behind his back and attempted to place him under arrest. (*See* Doc. .50 at 8; Doc. 2 at 7.) Yeaton yelled, "[F]uck you," and resisted both officers' attempts to restrain him. (Doc. 2 at 7.) Yeaton also locked his arms in the front of his body to avoid being handcuffed, and then grabbed the front of the patrol vehicle's bumper and refused to let go. (*Id.*)

Trooper Trewick again gave verbal commands for Yeaton to place his hands behind his back and he yelled, "Get your fucking hands off me." (Doc. 2 at 7.) As

the officers made several attempts to restrain him, Trooper Trewick repeated her commands for Yeaton to place his hands behind his back. (*Id.*) After Yeaton yelled, “Come on girls,” Trooper Trewick told Officer Gibson that she was going to back up. (*Id.*) As she released his arms, Yeaton started to turn towards Trooper Trewick and began to state, “Just back the fuck . . . .” (*Id.*) Trooper Trewick drew her taser and instructed Yeaton to get on the ground. (*Id.*) Yeaton replied, “[N]o,” but eventually allowed Officer Gibson to handcuff him. (*Id.*) As Officer Gibson was handcuffing Yeaton, he yelled, “[Y]ou know what you really should be ashamed of yourself.” (*Id.*) Yeaton’s female passenger told the officers that Yeaton had drank around six to seven beers, while she had only consumed water and coffee. (*Id.* at 7-8) Trooper Trewick confirmed that Yeaton’s passenger had a valid driver’s license and allowed her to leave the scene. (*See id.* at 8.)

Following his arrest, Yeaton refused to provide a blood sample upon request and a warrant for a blood draw was issued by Judge J. Sheffield of the Lincoln County Justice Court. (Doc. 2 at 8.) With the assistance of multiple law enforcement officers, a blood sample was obtained from Yeaton and sent to the Montana Crime Lab. (Doc. .50 at 8; Doc 2 at 8.) Based on Yeaton’s actions, he was issued citations for felony DUI, fourth or subsequent offense, resisting arrest, driving without a valid driver’s license, and speeding. (Doc. .50 at 10-13; Doc 2 at

9.) The State later filed an Information with these charges in district court and added an alternative count of felony DUI per se. (Doc. 4.)

### **Pretrial proceedings and sentencing**

Yeaton entered into a plea agreement with the State where he agreed to plead guilty to felony DUI per se in exchange for dismissal of all other charges. (Doc. 19.) On August 5, 2019, Yeaton admitted to operating a vehicle with a blood alcohol content of .08 or more, and the district court ordered the preparation of a presentence investigation report (PSI). (Tr. at 16.) However, Yeaton failed to report to probation and parole to participate in the PSI process and did not return the PSI questionnaire. (Doc. 24.) Consequently, a notification of Yeaton's noncompliance was filed in the district court. (*Id.*) Following this noncompliance notification, Yeaton filed a sentencing memorandum where he argued that it was his constitutional right to refuse to participate in the PSI process. (Doc. 25.)

On October 29, 2019, at the time set for his sentencing hearing, the State was not ready to proceed because the PSI had not been completed. (Doc. 28.) The district court ordered the PSI to be completed without Yeaton's participation and continued the hearing. (*See id.*) Because of his lack of participation, Yeaton's probation and parole officer used a prior PSI from 2010 to draft an updated PSI. (*See* Tr. at 20-21.)

On November 18, 2019, at his second sentencing hearing, Yeaton requested several changes to the updated PSI that he disagreed with. (Tr. at 18-21.) Yeaton, through his defense attorney, asked the district court to modify the PSI's financial assets section from "unknown" to "none" because his probation and parole officer did not have this information. (Doc. 29 at 2; Tr. at 19.) Yeaton also disagreed with the PSI's psychological information section, which was based on his 2010 PSI, and reported that he was on social security disability income (SSDI) because of his shoulder and COPD. (*See* Tr. at 20-21.) The State did not comment on these requested changes.

The district court asked for sentencing recommendations and both parties agreed that the court should follow the plea agreement and sentence Yeaton to five years in the DOC with two years suspended. (Tr. at 22-23.)<sup>1</sup> The parties differed, however, as to their recommendations for Yeaton's fine and conditions of probation. The State asked that all 31 conditions recommended in Yeaton's PSI be adopted. (Tr. at 22.) Yeaton, however, asked for several proposed conditions of his sentence to be struck from the final judgment. (Tr. at 23-26.)

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<sup>1</sup> The State has attached the relevant portions of Yeaton's sentencing hearing. (Tr. at 22-30; App. A.)

Yeaton argued that all fines and fees should be “waived” because he was on SSDI and his income, as stated in the PSI, was only \$550. (Tr. at 23; *see also* Doc. 29 at 1 (PSI listing Yeaton’s employment status as “SOCIAL SECURITY DISABILITY INCOME”).) Relevant to this appeal, Yeaton asked the district court to strike: Condition 13b (\$500 charge for felony offenses (20 percent of the fine) under Mont. Code Ann. § 46-18-236(1)(b)); Condition 13c (\$50 DUI charge under Mont. Code Ann. § 46-18-236(1)(c)); Condition 13d (\$10 technology surcharge under Mont. Code Ann. § 3-1-317); and Condition 13g (\$5,000 felony DUI per se fine under Mont. Code Ann. § 61-8-731(3)).<sup>2</sup>

The district court asked Yeaton if the \$5,000 DUI per se fine imposed under Condition 13g was mandatory and his defense counsel replied “Yes,” but argued that federal law precluded that State from taking his SSDI. (Tr. at 25 (“THE COURT: Now [Condition 13g] is the mandatory fine? [DEFENSE COUNSEL]:

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<sup>2</sup> Admittedly, the record is unclear whether Yeaton was sentenced pursuant to Mont. Code Ann. § 61-8-731(1) or -731(3), particularly given that Yeaton’s judgment cites to Mont. Code Ann. § 46-18-231 for his \$5,000 fine. (Doc. 33 at 2.) Nonetheless, the State agrees with Yeaton’s argument (Appellant’s Br. at 17-18) that he could only be sentenced under subsection (3) of the statute because his sentence of 5 years DOC with 2 years suspended was not permitted under subsection (1). *Compare* Mont. Code Ann. § 61-8-731(1)(a)(i)-(ii) (permitting a DOC sentence of not less than 13 months or more than 2 years, followed by a consecutive term of up to 5 years that must be suspended) *with* Mont. Code Ann. § 61-8-731(3) (mandating a sentence of not less than 13 months or more than 5 years with no limitations on suspending any portion of the sentence). The parties thus agree that Yeaton’s fine and sentence were imposed pursuant to Mont. Code Ann. § 61-8-731(3).

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.”.) Yeaton referenced *State v. Eaton*, 2004 MT 283, ¶ 1, 323 Mont. 287, 99 P.3d 661, in support of his argument. (Tr. at 25.) Yeaton also asked the district court to strike proposed Condition 28 of the PSI requiring him to pay the cost of imprisonment, probation, and alcohol treatment because he was not financially able to pay these costs, even though the condition only required him to make payments “if financially able.” (Tr. at 24.)

The State responded that it generally opposed waiving any non-discretionary fines and fees, and thus opposed striking the DUI per se fine because it was mandatory. (Tr. at 27-28.) The State also noted its understanding that the Court was prevented from “specifically” ordering Yeaton to pay the fine with SSDI. (Tr. at 27-28 (“I recognize and I am not well versed with the case that [defense counsel] has cited, however, it is my understanding that while the Court cannot order the Defendant specifically to use those social security funds to pay his fine, that fine, as I understand it, is not discretionary and is mandatory.”).) The State thus opposed striking any of the mandatory fines and fees, except for the cost of assigned counsel. (Tr. at 28.)

As to the condition requiring Yeaton to pay the cost of imprisonment, probation, and alcohol treatment, the State asserted that it opposed striking this

condition because it contained a “qualifier” that allowed the DOC to require payment only if Yeaton had the ability to pay. (*See* Tr. at 27 (“MS. BORIS: I think that the qualifier places that as more of a discretionary condition depending on that ability to pay. THE COURT: Let[] the Department decide. MS. BORIS: Yeah, I would oppose striking that condition as well.”).)

The district court sentenced Yeaton to the DOC for five years and suspended two years. (Tr. at 28-29; Doc. 33 at 2.) The district court ordered Yeaton to pay: (1) a \$5,000 fine under Mont. Code Ann. § 61-8-731(3); (2) a 20 percent “surcharge” of Yeaton’s fine, totaling \$500, pursuant to Mont. Code Ann. § 46-18-236(1)(b); (3) a \$50 surcharge under Mont. Code Ann. § 46-18-236(1)(c); and (4) a \$10 technology surcharge under Mont. Code Ann. § 3-1-317. (*See* Tr. at 29; Doc. 33 at 3-4 (ordered in Yeaton’s judgment as Conditions 13e, 13b, 13c, 13d).) The district court also imposed a condition requiring Yeaton to pay the cost of imprisonment, probation, and alcohol treatment “if financially able.” (*See* Tr. at 29; Doc. 33 at 5 (Condition 28).) Furthermore, the district court ordered Yeaton to seek and maintain employment as a condition of his sentence. (Doc. 33 at 2.)

### **SUMMARY OF THE ARGUMENT**

The district court did not err by ordering Yeaton to pay the costs of his supervision because it conditioned payment on his ability to pay. Pursuant to the

plain language of Mont. Code Ann. § 61-8-731(4)(b), Yeaton is only required to pay these costs if “financially able.” The district court was not required to make specific findings regarding Yeaton’s ability to pay and properly deferred to the DOC to make this determination.

The district court’s imposition of a fine and surcharges were not illegal and did not violate federal law. Unlike the district court in *Eaton*, the sentencing court in this case did not attempt to levy, directly or indirectly, Yeaton’s SSDI. Instead, the district court imposed the fine without specifically referencing Yeaton’s SSDI. Critically, Yeaton’s sentence did not violate federal law because this Court has recognized that nothing in the Social Security Act prevents a district court from imposing new debts or a fine—it only prevents a court from explicitly ordering payment of a financial obligation with SSDI benefits or from attempting to improperly levy these funds through “other legal process.” That did not occur in this case.

Additionally, in addition to waiving it below, Yeaton’s argument that this fine was discretionary, and not mandatory, is irrelevant to the issue of whether his financial obligations were illegal. Yeaton simply fails to show how the imposition of a fine and surcharges, even if discretionary, violate federal law. Importantly, Yeaton does not argue this issue should be remanded to the district court to allow for an ability to pay determination. Rather, he solely argues that the fine and

surcharges should be struck as an illegal sentence. Contrary to this argument, however, the imposition of the fine and surcharges were within statutory parameters and were a legal, albeit arguably objectionable, sentence. Because Yeaton does not argue, in the alternative, that this Court should remand for further proceedings to determine if he has the ability to pay his fine and surcharges, he has waived the issue and the Court should decline to address it.

## **ARGUMENT**

### **I. Standard of review**

“The Court reviews fines the same as sentencing conditions.” *State v. Ingram*, 2020 MT 327, ¶ 8, 402 Mont. 374, 478 P.3d 799; *State v. Reynolds*, 2017 MT 317, ¶ 15, 390 Mont. 58, 408 P.3d 503. The Court “review[s] sentencing conditions first for legality, then for abuse of discretion as to the condition’s reasonableness under the facts of the case.” *Ingram*, ¶ 8; *State v. Daricek*, 2018 MT 31, ¶ 7, 390 Mont. 273, 412 P.3d 1044. “Whether a sentence is legal is a question of law subject to de novo review.” *Ingram*, ¶ 8; *Daricek*, ¶ 7. A “review of legality is generally confined to determining: whether the sentence falls within the statutory parameters, whether the district court had statutory authority to impose the sentence, and whether the district court followed the affirmative

mandates of the applicable sentencing statutes.” *Ingram*, ¶ 8; *State v. Himes*, 2015 MT 91, ¶ 22, 378 Mont. 419, 345 P.3d 297.

**II. The district court did not err in imposing the costs of imprisonment, probation, and alcohol treatment under Mont. Code Ann. § 61-8-731(4)(b) because Yeaton is required to pay only “if financially able.”**

As a condition of probation, Montana law requires courts to sentence DUI offenders convicted of their fourth or subsequent offense to pay the costs of imprisonment, probation, and alcohol treatment if “financially able.” Mont. Code Ann. § 61-8-731(4)(b) (“The court shall, as a condition of probation, order . . . a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment under this section.”). Yeaton argues that the district court erred by ordering him to pay the cost of imprisonment, probation, and alcohol treatment under this provision without first determining if he was financially able to do so. (Appellant’s Br. at 7-13.) Yeaton contends that the district court was required to make specific findings regarding his ability to pay and this Court must remand because the lower court failed to do so. (*Id.* at 13.) However, the Court’s recent decision in *Ingram* directly undercuts Yeaton’s argument.

In that case, the district court ordered the defendant to pay the cost of imprisonment, probation, and alcohol treatment, pursuant to Mont. Code Ann. § 61-8-731(4)(b). *Ingram*, ¶ 13. Although the district court did not consider his

finances or ability to pay when imposing this condition, it mirrored the statutory language of Mont. Code Ann. § 61-8-731(4)(b) by requiring Ingram to pay these future costs “only if he is ‘financially able.’” *Ingram*, ¶ 13. Upon review, this Court determined that the district court did not err by imposing this condition after finding that the plain language of Mont. Code Ann. § 61-8-731(4)(b) requires the DOC, not the sentencing court, to “assess[] a defendant’s ability to underwrite the costs associated with his or her sentence.” *Ingram*, ¶ 15. Indeed, “it is the Department that is ‘charged with supervising probationers’ ‘in accord with the conditions set by a sentencing judge[;]’ directed to expense the ‘rates and charges to [probationers] in any community correction program[;]’ and granted the authority to determine, after sentencing, the costs of ‘imprisonment, probation, and alcohol treatment’ that a sentencing court has imposed under § 61-8-731(4)(b), MCA.” *Ingram*, ¶ 14; *Daricek*, ¶ 12 (quoting Mont. Code Ann §§ 46-23-1011(1), 53-1-501(2), 61-8-731(4)(b)) (internal quotation marks omitted).

Here, as in *Ingram*, the district court in this case applied the plain language of Mont. Code Ann. § 61-8-731(4)(b) by requiring Yeaton to pay the costs of supervision only if “financially able.” (Tr. at 27.) The district court thus properly deferred to the DOC to determine if Yeaton had the ability to pay these costs. (*See id.* (“MS. BORIS: I think that the qualifier places that as more of a discretionary condition depending on that ability to pay. THE COURT: Let[] the

Department decide.”.) Accordingly, contrary to Yeaton’s argument, the district court was not required to make any specific findings regarding his financial ability to pay these costs. This Court should thus affirm the district court’s imposition of Yeaton’s supervision costs under Mont. Code Ann. § 61-8-731(4)(b).

**III. The district court did not violate the law by imposing a fine and surcharges totaling \$5,560.**

**A. The district court’s imposition of a fine and other financial obligations was not illegal under federal law.**

Yeaton argues that the district court’s imposition of his fine, court charges, and a technology surcharge were illegal under federal law, specifically 42 U.S.C. 407(a), and cites to *Eaton*. (Appellant’s Br. at 14.) Pursuant to 42 U.S.C. § 407(a), “none of the moneys paid or payable . . . under this title [the Social Security Act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.” *Eaton*, ¶ 23; *Ingram*, ¶ 11 (quoting 42 U.S.C. § 407(a)). Consequently, “[t]his statute provides that Social Security benefits cannot be attached or otherwise subjected to legal process.” *Ingram*, ¶ 11.

In *Eaton*, the defendant was convicted of felony theft and the district court ordered him to pay full restitution in the amount of \$114,520.32 as a condition of his suspended sentence. *Eaton*, ¶¶ 1, 24. Specifically, the district “court ordered

Eaton to make payments of 20 percent of his net income and indicated that net income includes income from any source including social security or retirement benefits.” *Eaton*, ¶ 24. On appeal, this Court reversed after finding that the sentencing court’s order conflicted with 42 U.S.C. § 407(a), and was “an improper attempt to subject Eaton’s social security benefits to ‘other legal process.’” *Eaton*, ¶¶ 26-27.

In *Ingram*, the Court reviewed a defendant’s claim that a mandatory \$5,000 fine imposed under Mont. Code Ann. § 61-8-731(1)(a)(iii) was illegal because his sole source of income was from SSDI. *Ingram*, ¶¶ 5, 11. In finding that Ingram’s fine was not illegal and did not violate 42 U.S.C. § 407(a), the Court contrasted his sentence against the defendant’s sentence in *Eaton*. There, the district court imposed restitution and explicitly ordered that Eaton pay 20 percent of his social security income toward his restitution obligation. *Ingram*, ¶ 11 (citing *Eaton*, ¶ 24). However, Ingram’s sentence did not contain the same mistake because the district court merely imposed the fine without referencing specific sources of income or assets, and did not directly or indirectly attempt to levy his SSDI. *Ingram*, ¶ 11 (“The District Court simply imposed the mandatory fine, referenced no source of income or assets, and did not attempt to capture, directly or indirectly, Ingram’s SSDI benefit and thereby violate the Social Security Act.”). The Court also noted that Ingram was specifically ordered by the district court to

obtain employment. *Ingram*, ¶ 11. The Court thus recognized that Ingram’s income sources could change over time and affirmed his fine. *Ingram*, ¶ 12 (citing *State v. Lampart (In re Lampart)*, 306 Mich. App. 226, 240-41, 856 N.W.2d 192 (2014) (recognizing that a defendant’s “income and income sources conceivably could change over time”)).

Here, like in *Ingram*, the district court did not reference Yeaton’s SSDI benefits when ordering him to pay the DUI per se fine, and did attempt to levy these funds, directly or indirectly. (*See* Tr. at 29.) Additionally, like the defendant in *Ingram*, the district court ordered Yeaton to seek and maintain employment as a condition of his sentence. (Doc. 33 at 2.) Yeaton does not challenge this obligation and thus implicitly recognizes that his income could conceivably change over time. Furthermore, due to Yeaton’s explicit refusal to participate in the PSI process, his exact financial situation is unknown. (Doc. 25.) Indeed, his self-serving statement at sentencing that he does not have any assets is dubious at best as he was arrested driving a 2010 Ford Taurus that contained paperwork indicating the vehicle may have belonged to him. (*See* Doc. 2 at 7 (Trooper Trewick observing that Yeaton’s name was listed on either the vehicle’s registration or its insurance).) Accordingly, considering that Yeaton may obtain employment in the future or may have other assets at his disposal, the district court’s imposition of a fine, charges, and a surcharge did not violate 42 U.S.C. § 407(a), or otherwise run afoul of federal law.

**B. Even if the district court's imposition of \$5,560 in financial obligations was discretionary, Yeaton fails to show how this rendered his sentence illegal.**

The parties agree that Yeaton was sentenced under Mont. Code Ann. § 61-8-731(3). At the time of Yeaton's conviction, this provision provided that if a person is convicted of DUI or its equivalent, including DUI per se, and the person has any combination of four or more prior convictions of DUI or its equivalent,

and the person was, upon a prior conviction, placed in a residential alcohol treatment program . . ., whether or not the person successfully completed the program, the person shall 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). Reviewing the transcript of Yeaton's change of plea hearing and his PSI, the State agrees that Yeaton had previously been sentenced for his fourth or subsequent DUI in Montana and had previously failed to complete alcohol treatment at a residential alcohol treatment program.<sup>3</sup>

Yeaton contends that this fine, and his other financial obligations, are discretionary under state law and must be struck because the district court erred by

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<sup>3</sup> At Yeaton's change of plea, he mistakenly stated that this conviction was his "Fourth" DUI. (Tr. at 15.) However, Yeaton's PSI lists at least five previous convictions for DUI, or a conviction for an offense this is substantially similar, including a 2010 conviction in Lincoln County for DUI, fourth of subsequent offense. Nevertheless, the exact number of Yeaton's convictions for DUI is not at issue in this case and the parties agree that Yeaton was sentenced under Mont. Code Ann. § 61-8-731(3) for his fifth or subsequent DUI offense. *Supra* n.1.

imposing them. (Appellant’s Br. at 16-18.) Nonetheless, even if Mont. Code Ann. § 61-8-731(3) can be interpreted as affording a sentencing court the discretion to impose either a custodial sentence, or a fine, or both, which the State does not concede,<sup>4</sup> this argument fails to show how this supposed discretion rendered the sentence illegal. Indeed, Yeaton does not argue that the district court’s imposition of these financial obligations was an abuse of discretion requiring remand for further proceedings. Instead, on appeal, Yeaton claims that the district court imposed an illegal sentence by requiring payment from his SSDI and requests that this portion of the sentence be “struck from [his] judgment.” (Appellant’s Br. at 18.)

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<sup>4</sup> The State notes that Yeaton’s interpretation of the statute would allow a district court to forgo the minimum term of imprisonment of 13 months and elect to only sentence a fifth time DUI offender to a fine. (Appellant’s Br. at 18 (stating that Mont. Code Ann. § 61-8-731(3) allows a sentencing court to “impose a DOC sentence *or* a fine *or* both”) (emphasis in original).) This interpretation would mean that the Legislature intended to mandate a minimum prison term for a first through fourth DUI offense but provide for a more lenient sentence for fifth or subsequent offenses by allowing a serial DUI offender to avoid jail time completely. Not only does this interpretation ignore the entire sentencing hierarchy for DUI fines and sentences, it would lead to absurd results. *In re Marriage of Shirilla*, 2004 MT 28, ¶ 12, 319 Mont. 385, 89 P.3d 1 (“When possible, we interpret statutes to give effect to the Legislature’s intent. Section 1-2-102, MCA. We will also read and construe the statute as a whole to avoid an absurd result and to give effect to a statute’s purpose.”). Nevertheless, because Yeaton’s sentence was within statutory parameters, and therefore legal, and Yeaton does not argue that his fine was an abuse of discretion, this Court need not engage in a formal interpretation of this statute and may dispense with this case on other grounds.

Indeed, even if it was within the district court’s discretion whether to impose the fine, the fine was not in excess of \$10,000, and was thus not illegal because it did not exceed statutory parameters. *State v. Kotwicki*, 2007 MT 17, ¶ 13, 335 Mont. 344, 151 P.3d 892 (“We consistently have held that a sentence is not illegal if it falls within statutory parameters.”) (citation omitted). Also, the district court’s imposition of \$550 in court charges and the \$10 court information technology surcharge were likewise within statutory limits. Mont. Code Ann. §§ 3-1-317(1)(a), 46-18-236(1)(b)-(c). Consequently, even if it was discretionary for the district court to impose a fine and other financial obligations, and the district court did not utilize its discretion, that only rendered the sentence objectionable, not illegal. *See Ingram*, ¶ 18 (“The District Court’s failure to make specific findings regarding Ingram’s ability to pay the fine rendered the condition objectionable, not illegal.”); *Kotwicki*, ¶ 13 (“We also have determined that a sentencing court’s failure to abide by a statutory requirement rises to an objectionable sentence, not necessarily an illegal one . . . .”) (citations omitted).

Furthermore, even if a fine for a fifth or subsequent DUI is discretionary, and not mandatory, Yeaton fails to explain how the district court’s order imposing the alleged discretionary fine violated 42 U.S.C. § 407(a), or any other provision of federal law. As discussed above, the Court reversed in *Eaton* because the district court required the defendant to pay restitution from his “net income,” which was

defined as any other source of income including SSDI. *Eaton*, ¶¶ 23-24, 26-27. Importantly, the Court’s holding that Eaton’s sentence illegally conflicted with federal law did not rest on whether the ordered restitution was mandatory. Instead, as clarified in *Ingram*, “nothing in the wording of the [social security] statute purports to prohibit the imposition of new debt or fines.” *Ingram*, ¶ 11. Instead, a district court runs afoul of 42 U.S.C. § 407(a) when it explicitly orders a defendant to pay a financial obligation with SSDI benefits, or otherwise improperly attempts to levy these funds through “other legal process.” See *Eaton*, ¶¶ 25-26; *Ingram*, ¶ 11. As discussed, the district court in this matter did not make the same mistake as the sentencing court in *Eaton* by directly levying Yeaton’s SSDI. Yeaton’s argument that the district court retained the discretion to waive these fines is simply irrelevant to the issue on appeal, i.e., whether the district court’s imposition of financial obligations rendered Yeaton’s sentence illegal.

Additionally, although this Court has apparently never addressed whether the minimum fine of \$5,000 under Mont. Code Ann. § 61-8-731(3) is discretionary or mandatory, as opposed to the mandatory minimum fine imposed under subsection (1), Yeaton has waived this argument and the Court should decline to address it. At sentencing, Yeaton’s defense counsel stipulated that the \$5,000 fine was mandatory and argued, instead, that the fine should be waived because it was illegal under federal law. (Tr. at 25.) Thus, not only did Yeaton fail to argue that

the district court retained the discretion to decide whether or not to impose the fine, he agreed with the district court and the prosecution that the fine's imposition was mandatory under Montana law. (*See id.* at 25, 28) Consequently, even if subsection (3) afforded the district court with some latitude to impose the minimum \$5,000 fine, Yeaton cannot change his legal theory on appeal and now argue that the fine was discretionary. *State v. Ely*, 2003 MT 140, ¶ 9, 316 Mont. 169, 171, 69 P.3d 1189 (“It is well-established that an appellant may not change legal theories on appeal or raise issues which were not raised in the trial court.”).

Accordingly, because Yeaton conceded this point below, and cannot show that his sentence was illegal, the Court should not address his argument that the fine for a fifth or subsequent DUI is discretionary. *See Kotwicki* (discussing how the Court will address a defendant's change of legal theory on appeal “as long as such a change of theory [plausibly] alleges that the sentencing court imposed an illegal sentence”).

**C. This Court should not remand for further proceedings to determine if Yeaton has the ability to pay his financial obligations because he has not raised this argument on appeal.**

Lastly, the State notes that Yeaton does not argue, in the alternative, that the Court should remand to the district for further proceedings to determine if he has the ability to pay his fine and surcharges under the appropriate statutory provisions. *See generally* Mont. Code Ann. §§ 3-1-317(2), 46-18-231(3), -236(2). In *Ingram*,

the defendant objected to the imposition of a \$500 surcharge under Mont. Code Ann. § 46-18-236(1)(b) because the district court failed to consider his financial resources before imposing the cost. *Ingram*, ¶ 19. The defendant properly objected to the surcharge, both before the sentencing court and on appeal. *Ingram*, ¶ 20. Following the State’s concession on the issue, the Court reversed the \$500 surcharge and remanded to the district court for further proceedings to determine Ingram’s ability to pay the charge. *Ingram*, ¶¶ 19-20 (citing Mont. Code Ann. §§ 46-18-231, -232, -236(2)).

Here, the State cannot make the same concession. Critically, even if Yeaton sufficiently raised an ability to pay argument before the district court, he does not properly make that argument before this Court and has thus waived the issue. This Court will decline to address claims or arguments that an appellant does not address on appeal. *Ford v. State*, 2005 MT 151, ¶ 35, 327 Mont. 378, 114 P.3d 244 (finding that “we have no occasion to review the District Court’s decision” when the appellant abandoned certain contentions on appeal); *Skinner v. Allstate Ins. Co.*, 2005 MT 323, ¶ 9, 329 Mont. 511, 127 P.3d 359 (noting that a party did not brief certain issues on appeal and “[t]hose issues, therefore, have been abandoned on appeal, and we do not address them”). This is because “[t]he Court normally confines its review to the issues actually presented on appeal. . . .” *Prosser v. Kennedy Enters.*, 2008 MT 87, ¶ 13, 342 Mont. 209, 179 P.3d 1178.

As mentioned, Yeaton does not argue that this Court should remand to the district court to conduct an ability to pay analysis regarding his fine and surcharges. Tellingly, although Yeaton offhandedly cites to Mont. Code Ann. §§ 3-1-317(2) and 46-18-236(2) for his argument that imposition of these specific financial obligations was illegal and must be struck from the judgment, Yeaton does not make a secondary argument requesting remand for further proceedings pursuant to these statutes. Accordingly, because Yeaton fails to carry this argument forward on appeal, this Court should find that he has waived it and affirm the imposition of Yeaton's fine and surcharges.

### **CONCLUSION**

The district court imposed a legal sentence and the Court should affirm it.

Respectfully submitted this 16th day of June, 2021.

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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 5,685 words, excluding certificate of service and certificate of compliance.

/s/ Michael P. Dougherty  
MICHAEL P. DOUGHERTY

**APPENDIX A**

## CERTIFICATE OF SERVICE

I, Michael Patrick Dougherty, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 06-16-2021:

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Dated: 06-16-2021