IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0429

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MATTHEW LYMAN TIPPETS,

Defendant and Appellant.

# BRIEF OF APPELLANT

On Appeal from the Montana Thirteenth Judicial District Court, Yellowstone County, the Honorable Donald L. Harris, Presiding

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## STATEMENT OF THE ISSUES

1. Did the district court err when it revoked Matthew Tippets's suspended sentence for missing a meeting without following the statutory criteria put into place by the 2017 criminal justice reforms?

2. Is Tippets entitled to credit for time served for the 60 days he spent in jail and in the START facility during his suspended sentence?

## STATEMENT OF THE CASE

Probation Officer Breanne Lewis specializes in dealing with probationers who have mental health issues. (3/18/20 Tr. 5.) She was assigned to Matthew Tippets, whom the district court had sentenced to the custody of the Department of Health and Human Services (DPHHS) for a term of five years, all suspended. (3/18/20 Tr. 5; Doc. 46.) After about six months of supervision, Lewis carried out an intervention hearing. (Doc. 47 at 1-2.) As a result of the hearing, Tippets served a sanction in local jail and the secure START (Sanction, Treatment, Assessment, Revocation, and Transition) facility in Anaconda for a total of 60 days, from October 11, 2019 to December 10, 2019. (Doc. 47 at 2-3.)

On January 28, 2020, Tippets missed his weekly meeting with Officer Lewis. (3/18/20 Tr. 6, 11.) Lewis made no attempt to contact

Tippets and filed a violation report the next day, January 29. (3/18/20 Tr. 6, 11; Doc. 47.) The report alleged Tippets missed two appointments to see his probation officer and did not schedule a mental health appointment. (Doc. 47 at 1.) The State filed a two-sentence petition to revoke and arrested Tippets. (Docs. 48, 49, 51.) He sat in jail for over four months. (*See* Doc. 61 at 1-2.)

At the close of the evidentiary hearing, the district court found that Tippets violated his probation conditions and they were "substantial violations of the conditions of his sentence." (3/18/20 Tr. 15.)

- The district court made no finding Lewis applied and documented appropriate violation responses to the compliance violation of missing a meeting.

- The district court made no finding Lewis exhausted the procedures under the incentives and interventions grid.

- The district court made no finding about Tippets's conduct that indicated he would not respond to further efforts under the incentives and interventions grid.

The district court nonetheless revoked Tippets's suspended sentence and ordered his transport to Montana State Hospital to serve out a DPHHS sentence of two years, two months, and twenty-one days, with credit for jail incarceration of 138 days, reflecting his time in jail

pending resolution of the petition to revoke from February 5, 2020 to June 22, 2020. (Doc. 61 at 1-2.) The district court did not grant Tippets 60 days of credit for the time he served in jail and in START that followed his intervention hearing. (Doc. 47 at 3; Doc. 61 at 1-2.) Tippets filed a timely appeal. (Docs. 61, 64.)

## STATEMENT OF THE FACTS

Matthew Tippets, 39, has struggled with mental health his entire life. Likely inheriting schizophrenia from his mother, Tippets set the garage on fire when he was three years old. (Doc. 29, Montana State Hospital Initial Social Assessment at 4-5, 28, hereinafter "MSH".) At thirteen, Tippets turned to substances to cope with his depression and despair. (MSH at 5.) His high school terminated him in the 11th grade, but Tippets later obtained a GED. (MSH at 4.) Tippets joined the military so he could pay for college but psychiatric issues prevented him from completing his full duty assignment. (MSH at 4-5.) He honorably discharged. (MSH at 5.) Tippets has been unable to hold a job for more than a few months due to depression and poor concentration. (MSH at 4.) He has historically had trouble making appointments and following through with paperwork when applying for mental health services.

(MSH at 20.)

The district court placed Tippets on probation in 2019 and he reported to Probation Officer Breanne Lewis for supervision. (Docs. 46, 47.) Tippets reached out to Lewis and asked for frequent reporting meetings with her. (3/18/20 Tr. 12.)

Lewis sanctioned Tippets for missing a meeting with "relapse prevention group" and told him to complete some paperwork from the Mental Health Center. (Doc. 47 at 2.) Tippets expressed confusion and made comments about grief. (Doc. 47 at 2.) The Mental Health Center refused to provide services. (Doc. 47 at 2.)

In response to Tippets's drug use admissions and mental health difficulties, Lewis held an intervention hearing with Tippets on October 11, 2019 and sanctioned Tippets to 60 days at START. (Doc. 47 at 2.) Lewis had placed Tippets into jail that day, and a few days later the DOC transferred him to START to serve out his sanction. (Doc. 47 at 3.)

Tippets left START on December 10, 2019. (Doc. 47 at 2-3.) After leaving START, Tippets admitted to drinking, missing a UA, and using drugs one time, which Lewis reprimanded him for. (Doc. 47 at 2-3.)

Tippets did not report for his January 14 weekly meeting. (3/18/20 Tr. 6.) Lewis called Tippets on the phone three days later and Tippets explained he had shown up at the Public Defender's Office instead of Lewis's office at the appointment time. (3/18/20 Tr. 6, 10-11.) It was common for Lewis's specialized caseload of probationers with mental illness to not keep scheduled appointments or to show up on different days. (3/18/20 Tr. 11.) Tippets reported for his January 21 meeting. (3/18/20 Tr. 6.)

Tippets did not show up for his January 28 meeting. (3/18/20 Tr. 6, 11.) Lewis did not call Tippets; Lewis did not go to Tippets's residence to ask why he did not report. (3/18/20 Tr. 11.) Lewis filed a report of violation the next day without taking any of the actions provided for in the MIIG. (3/18/20 Tr. 6, 10-11; Doc. 47.) Lewis alleged Tippets: 1.) missed two appointments to see his probation officer and

2.) did not schedule a mental health appointment.[1] (Doc. 47 at 1.)

Tippets contested the allegations and the court scheduled an evidentiary hearing. (Docs. 53, 54.) The district court said it would only hear evidence on the reported violations and would not hear evidence on disposition. (3/18/20 Tr. 3-4, 8.) When Lewis testified at the hearing and tried to explain her overall supervision of Lewis, the district court said, "Please confine the testimony at this time to those counts." (3/18/20 Tr. 6.)

The State attempted to ask about the Montana Incentives and Interventions Grid (MIIG). (*See* 3/18/20 Tr. 7-8.) Lewis only testified there had been several interventions and she believed the MIIG was

[1] The State did not prove by a preponderance of the evidence that Tippets violated the second count in the petition to revoke. Due process requires that defendants receive written notice of claimed probation violations. *State v. Finley*, 2003 MT 239, ¶ 31, 317 Mont. 268, 77 P.3d 193. The State cannot use violations it does not notify the defendant about. *State v. Pedersen*, 2003 MT 315, ¶ 21, 318 Mont. 262, 80 P.3d 79. Lewis only alleged Tippets failed to schedule a mental health appointment and provide a copy of the appointment date and time to her. (Doc. 47 at 1.) When asked if Tippets did this, Lewis said he did, or that Tippets connected with "Annette" to schedule the appointment, and she didn't. (3/18/20 Tr. 7, 13-14.) This sole piece of contradictory testimony does not meet the preponderance of the evidence standard. Lewis testified, "and then he stopped going" in what is either a reference to working with a case manager or to coordinating bridging medications from Riverstone. Tippets had no notice that he needed to put on a defense for those allegations. (*See* 3/18/20 Tr. 7; Doc. 47 at 1.) Furthermore, Tippets was taking medications from Riverstone—which Lewis conceded. (3/18/20 Tr. 13-14.)

exhausted without providing documentation or details as to how the grid was exhausted. (3/18/20 Tr. 7.) Tippets then objected that Lewis's testimony was exceeding the scope of the evidentiary hearing, and the district court sustained the objection. (3/18/20 Tr. 8.)

The district court found by a preponderance of the evidence that Tippets violated both counts and "that those are substantial violations of the conditions of his sentence." (3/18/20 Tr. 15.) The district court made no findings as to whether the violations were compliance or non-compliance violations, that appropriate graduated violation responses were documented, that the MIIG was exhausted, or that Tippets would not be responsive to further efforts under the MIIG. (*See* 3/18/20 Tr. 15-18.)

The district court scheduled a disposition hearing for almost four months later. (Doc. 57.) Upon learning that Officer Lewis would not even be available to testify at that date, Tippets moved to expedite the hearing up a couple of weeks, which the court granted. (Docs. 58, 59.)

Tippets's disposition hearing took place on June 22, 2020 and lasted 18 minutes. (Doc. 60.) For reasons not explained on the record, Officer Lewis did not appear or testify at the disposition hearing. The

State presented no witnesses, evidence or legal argument about compliance violations, exhaustion of the MIIG, or that Tippets would not be responsive to further efforts under the MIIG. (*See* 6/22/20 Tr. 2-5.) The State only presented argument to revoke Tippets's sentence for a specified length and "don't give him street time or jail time because he's going to be getting credit for that time instead of revoking the sentence in its entirety." (6/22/20 Tr. 3-4.)

The district court said, "I have gone through this Report of Violation very carefully, and the problem, sir, is that [your] mental health needs are such that what we really have to do is make an intensive effort to address those, and the only place that I know of, and the State has told me about where we can do that to get you the quickest is at the State hospital, and it doesn't mean – it doesn't mean that you're going to be there the whole time." (6/20/20 Tr. 9.)

The district court continued, "And what I want you to understand [is] that nobody's here to punish you. What we want to see is you get stabilized and get in a regimen of taking the appropriate medications when you're supposed to take them, and then so that when you are released into the community with appropriate supports

– and that's the key thing. You have to have appropriate supports." (6/22/20 Tr. 10.)

The district court did not discuss the required statutory criteria to be met when revoking for only compliance violations. (6/22/20 Tr. 9-11.) The district court did not make a finding that the MIIG's appropriate graduated violation responses had been exhausted or that Tippets would not be responsive to further efforts under the MIIG. (6/22/20 Tr. 9-11.) The district court revoked Tippets's sentence. (6/22/20 Tr. 9-11.)

## STANDARDS OF REVIEW

When the issue presented in a revocation case is whether the district court had statutory authority to take a specific action, the question is one of law and this Court's review is de novo. *State v. Graves*, 2015 MT 262, ¶ 12, 381 Mont. 37, 355 P.3d 769.

"Calculating credit for time served is not a discretionary act, but a legal mandate." *State v. Parks*, 2019 MT 252, ¶ 9, 397 Mont. 408, 450 P.3d 889. Calculating credit is a question of law subject to de novo review. *Parks*, ¶ 7.

## SUMMARY OF THE ARGUMENT

The Montana Legislature sent a clear message in 2017 when it passed criminal justice reform and bifurcated probation violations into compliance violations and non-compliance violations: No longer can any violation result in revocation of a suspended sentence. Now, the State can only revoke for non-compliance violations and a limited class of compliance violations. Tippets's violation of missing a meeting does not fall within that limited class.

An appeal of a revocation for only compliance violations is an issue of first impression before this Court. Under the new statute, revocation for a compliance violation can only occur when three criteria are met: 1.) the probation officer has documented appropriate graduated violation responses; 2.) the probation officer has exhausted the procedures in the Montana Incentives and Interventions Grid (MIIG); and 3.) the probationer's conduct indicates they will be unresponsive to further efforts under the MIIG. Mont. Code Ann. § 46-18-203(8).

The State failed to prove these statutory criteria and the district court erroneously revoked his suspended sentence. Tippets had an intervention hearing and cannot be revoked for violations that occurred

before the intervention hearing. Tippets missed a meeting. Officer Lewis did not document appropriate graduated violation responses, such as a verbal reprimand, curfew, or program assignment to correct the behavior. Officer Lewis did not exhaust the interventions available under the grid. Tippets's conduct of missing a meeting did not indicate he would be unresponsive to further interventions to ensure reporting compliance.

The district court ignored the statutory criteria. Instead, it carried out the revocation hearing as if the 2017 statutory reforms had never been enacted. Accordingly, Tippets's revocation must be reversed. Alternatively, Tippets is entitled under Mont. Code Ann. § 46-18-203(7)(b) to 60 additional days of mandatory credit for time he served in jail and in the START detention facility from October 11, 2019 to December 10, 2019.

## ARGUMENT

### I. The district court lacked statutory authority to revoke Tippets's suspended sentence for compliance violations under the 2017 revised revocation procedures.

"In 2017, based on the Commission's findings, the Montana Legislature passed sweeping criminal justice reform legislation aimed

at utilizing data driven decisions and evidence-based practices to reduce incarceration, statewide pressure on detention facilities, and the accompanying burden on taxpayers." *State v. Oropeza*, 2020 MT 16, ¶ 4, 398 Mont. 379, 456 P.3d 1023. Revocations of sentences accounted for 74% of prison admissions. *Oropeza*, ¶ 3, n.1. Under the old rules, any single violation of any condition was sufficient to revoke a suspended sentence. *See, e.g. State v. Gillingham*, 2008 MT 38, ¶ 28, 341 Mont. 325, 176 P.3d 1075.

The Legislature imposed two key changes. First, the Legislature required the DOC to adopt the Montana Incentives and Interventions Grid, or MIIG. *Oropeza*, ¶ 4. "The MIIG grid provides a consistent approach for Probation & Parole Officers to provide interventions to offenders for compliance and non-compliance violations with the goal of promoting accountability and long-term behavioral change." *Oropeza*, ¶ 5. Responses to violations must now be handled in a swift, certain, and proportional manner. Mont. Code Ann. § 46-23-1028(1). Graduated violation responses must be exhausted and documented before initiating the revocation process. Mont. Code Ann. §§ 46-18-203(1), 46-23-1028(1)(e). The grid provides officers with a range of

intervention responses depending on the category of the condition and level of intervention required. *Oropeza*, ¶ 5; *see also*, Montana Incentives/Intervention Grid, attached as Appendix C.

The second change by the Legislature was a new series of statutory restrictions for what kinds of violations could result in sentence revocation. *Oropeza*, ¶ 4. The Legislature bifurcated probation condition violations into either compliance violations or non-compliance violations. Mont. Code Ann. § 46-18-203(11)(b); *Oropeza*, ¶ 6. Any violation of a condition of supervision is a compliance violation except for five exceptions provided by statute, which are non-compliance violations. *Oropeza*, ¶ 6. "Compliance violations no longer result in automatic revocation of a deferred or suspended sentence, instead, the offender is subject to the appropriate intervention or incentive response." *Oropeza*, ¶ 6; Mont. Code Ann. § 46-18-203(8).

Now, only non-compliance violations and a limited class of compliance violations can result in sentence revocation. Mont. Code Ann. § 46-18-203(8). "Most violations are categorized as compliance violations and cannot result in an automatic revocation of a deferred or suspended sentence but must be addressed utilizing the MIIG

procedures." *State v. Fjelsted*, 2020 MT 278, ¶ 11, 402 Mont. 46, 475 P.3d 387. Under the new statutes, a defendant's probation can be revoked for a mere compliance violation only if the State has proved that three criteria apply. *See* Mont. Code Ann. § 46-18-203(8); *Oropeza*, ¶ 6. They are:

> **One- The probation officer has documented appropriate and graduated violation responses.** There must be a record and evidence that appropriate responses to a compliance violation have been attempted and documented in the offender's file, and these items must be described in the petition to revoke itself. Mont. Code Ann. §§ 46-18-203(1), 46-18-203(8)(a), 46-18-203(8)(b). The revocation statute works in conjunction with the supervision responses statute, which provides for violation responses to be made under the MIIG in a "swift, certain and proportional manner." Mont. Code Ann. § 46-23-1028(1). The grid includes guidance and procedures to determine when and how to exhaust and document "appropriate graduated violation responses before initiating the revocation process." Mont. Code Ann. § 46-23-1028(1)(e); *see also* Mont. Code Ann. § 46-18-203(1).
>
> **Two- The probation officer has exhausted the procedures in the grid.** This is a judicial determination by the district court that can be contested by the defense. Regardless of whether the compliance violation can be proved, the district court must still determine if the grid has been exhausted. If the court concludes the grid has not been exhausted then the sentence is not revoked, and the matter is referred back to the probation officer. Mont. Code Ann. § 46-18-203(8)(a). If the court concludes the grid has been exhausted, the sentence is still not revoked; rather, the district court is only authorized to continue the suspended or

deferred sentence with additional conditions, which could include a transfer to a secure facility, a community corrections program, prerelease, transitional living, enhanced supervision, or chemical dependency treatment for up to nine months. Mont. Code Ann. § 46-18-203(8)(b).

**Three- The district court finds that the probationer's conduct indicates the probationer will not be responsive to further efforts under the grid.** This is another judicial determination by the district court that can be contested by the defense. When the violation is a compliance violation, revocation can only occur when interventions under the grid will not be responsive to correct the undesired behavior, as indicated by the probationer's conduct. Mont. Code Ann. § 46-18-203(8)(c). Different undesired behaviors on the MIIG call for different interventions. (*See* App. C.) Additionally, this finding of non-responsiveness cannot be made until the probation officer exhausts and documents appropriate graduated violation responses before filing a report of violation. Mont. Code Ann. §§ 46-18-203(1), 46-23-1028(1)(e).

A compliance violation does not constitute cause to revoke a suspended sentence unless the State satisfies all three criteria above. *See Fjelsted*, ¶ 11. Conversely, non-compliance violations are not subject to these criteria and revocation may occur directly. *See Oropeza*, ¶ 7.

If a probation officer elects to pursue an intervention hearing under Mont. Code Ann. § 46-23-1012(3)(b), the officer cannot also pursue a revocation hearing for the same violation or earlier violations.

*State v. Martinez*, 2008 MT 233, ¶¶ 18-20, 344 Mont. 394, 188 P.3d 1034. When a probation officer reasonably believes a probationer has violated a condition and arrests a probationer, the officer is authorized to elect only one of the following options: Release the probationer, hold an intervention hearing under Mont. Code Ann. § 46-23-1015, or file a report of violation and proceed to formal revocation. Mont. Code Ann. § 46-23-1012(3); *Martinez*, ¶ 18. A probation officer cannot pursue a revocation hearing for conduct if the officer has already subjected the probationer to an intervention hearing for the same conduct. *Martinez*, ¶ 18; *State v. Johnston*, 2008 MT 318, ¶ 38, 346 Mont. 93, 193 P.3d 925, *overruled on other grounds by State v. Maynard*, 2010 MT 115, ¶ 21, 356 Mont. 333, 233 P.3d 331.

The 2017 statutory reforms did not amend Mont. Code Ann. § 46-23-1012, and *Martinez* and *Johnston* remain good law. The intervention hearing statute, Mont. Code Ann. § 46-23-1015, was amended by the 2017 reforms to require consultation of the MIIG to determine an appropriate response. But the disjunctive selection process of resolving accrued violations upon arrest by electing either an intervention hearing or formal revocation—but not both—remains

unchanged. Mont. Code Ann. § 46-23-1012(3). When an intervention hearing occurs, the previous violations have been addressed and cannot be used as future grounds for any of the three criteria set out by the Legislature when revoking for only compliance violations. A more severe non-compliance violation resolved by an intervention hearing would abide by this same restriction.

Tippets's act of missing a meeting with his probation officer did not satisfy the statutory criteria necessary to revoke for a compliance violation. The district court restricted the testimony that could be heard at the evidentiary hearing, and the State did not call Lewis to testify at the disposition hearing, so this Court has been left with a bare record confined to Lewis's violation report. Tippets did accrue violations relating to his use of substances, which he admitted to and did not hide from Lewis. (Doc. 47 at 1-2.) Lewis sanctioned Tippets for these violations by arresting him, holding an intervention hearing, and sending him to START. (Doc. 47 at 2-3.) Those violations were resolved by the intervention hearing and accompanying sanctions; they cannot be used as a basis to revoke Tippets now. *See Martinez*, ¶ 18; *Johnston*, ¶ 38.

When Tippets missed a meeting following START, Lewis immediately proceeded to file a report of violation the very next day without following the MIIG. (3/18/20 Tr. 6, 10-11; Doc. 47.) Tippets's failure to report falls under the "Reporting" category in the MIIG and the undesired behavior is missing a scheduled appointment, requiring a low intervention level response. (App. C at 6.) These interventions include appropriate responses such as a verbal reprimand, a program assignment to help Tippets with scheduling, or a curfew. (App. C at 6.)

Tippets has historically had trouble making appointments due to his schizoaffective disorder, but his missed meetings in January were the first time he had missed appointments with his probation officer for this period of supervision that can be documented from this record. Lewis had appropriate violation responses available under the grid but did not exhaust them before proceeding to revocation. Furthermore, the State did not present evidence that Tippets's conduct would indicate non-responsiveness to further efforts under the grid. When Tippets missed his meeting on January 14 by showing up at the Public Defender's Office instead of Lewis's office, Lewis called Tippets on

January 17. (3/18/20 Tr. 10-11.) Tippets then showed up at Lewis's office for the January 21 meeting. (3/18/20 Tr. 10.)

Tippets's conduct as to missing a meeting with the probation officer indicated his behavior could be corrected with a phone call. Further efforts would have driven home the importance of reporting. Lewis never initiated appropriate graduated violation responses under the Reporting category of the MIIG when he missed the January 28 meeting, so there is no documented record to indicate that Tippets would have been unresponsive to any such further efforts Lewis could have made.

As a contrast, Lewis did follow the MIIG procedures when Tippets demonstrated undesired behavior that fell under the "Drugs and Alcohol" category. (*See* App. C at 5.) When Tippets missed a UA and drank a couple of beers, he received verbal reprimands. (Doc. 47 at 2-3.) When Tippets admitted to meth use when he left START, Lewis placed Tippets on enhanced supervision and referred him to chemical dependency treatment. (Doc. 47 at 2.) Lewis could have and should have used graduated appropriate violation responses to correct

Tippets's reporting, but she did not and instead proceeded immediately to revocation. (*See* 3/18/20 Tr. 6, 11.)

The district court did not apply the revocation criteria for compliance violations at all and thus failed to make any findings of documentation, exhaustion, or unresponsiveness. The district court talked about an intensive effort to address Tippets's mental health needs, and to be stabilized on a regimen of appropriate medications (notwithstanding the fact that Tippets was already taking his medications). (6/22/20 Tr. 9-10; 3/18/20 Tr. 13-14.) The district court was also incorrect in holding that revocation to DPHHS was the only possible option; to the contrary, Tippets's counsel and the Legislature explained that interventions for all but a small class of compliance violations are to be resolved in the community through interventions provided by the grid. (*See* 6/22/20 Tr. 5-6, 9.)

Instead, the district court disposed of Tippets's petition to revoke as if the 2017 criminal justice reforms had never been passed. The error of revoking for only compliance violations without following the new statutory criteria must be corrected by reversal of Tippets's revocation.

## II. In the alternative, Tippets is entitled to 60 additional days of credit for time already served in detention.

"Credit must be allowed for time served in a detention center or for home arrest time already served." Mont. Code Ann. § 46-18-203(7)(b). The revocation statutes—both before and after the 2017 criminal justice reforms—have granted courts some measure of flexibility on whether to grant "street time," that is, time spent on probation but not in custody. *State v. Jardee*, 2020 MT 81, ¶¶ 9-10 399 Mont. 459, 461 P.3d 108. Incarceration credit, however, must always be allowed for time served in a detention center. Mont. Code Ann. § 46-18-203(7)(b). "When interpreting a statute, this Court will not look beyond its plain language if the language is clear and unambiguous." *Jardee*, ¶ 8.

If this Court does not agree with Tippets's argument on Issue One, then it must reverse for an amended judgment granting an additional 60 days of credit. *See Parks*, ¶ 14. If a suspended sentence is revoked, the judge must allow credit for "time served in a detention center." Mont. Code Ann. § 46-18-203(7)(b). The district court's written judgment correctly credited Tippets for the nearly five months he sat in

detention awaiting the outcome of his revocation. (Doc. 61 at 1-2.)[2] The district court, however, did not grant Tippets credit for time he served in jail and in the secure START facility from October 11, 2019 to December 10, 2019, a total of 60 days. (Doc. 47 at 2-3; Doc. 61 at 1-2.) Because credit must be allowed for time served in a detention center, Tippets is entitled to an additional 60 days of credit against his revoked sentence.

## CONCLUSION

Tippets respectfully requests this Court reverse the district court's order revoking Tippets's suspended sentence.

In the alternative, Tippets respectfully requests this Court remand to the district court with instructions to enter an amended judgment granting Tippets credit for time served in the amount of 60 additional days, representing time served from October 11, 2019 to December 10, 2019.

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[2] At the oral pronouncement of sentence, the district court stated, "It's the Court [sic] intent that this sentence not change your original discharge date . . ." (6/22/20 Tr. 10.) Despite this statement, the district court correctly granted Tippets the credit for time he served from February 5, 2020 to June 22, 2020 as his revocation case was pending. (Doc. 61 at 1-2.) Appellate counsel has contacted the Department of Corrections and confirmed that Tippets's discharge date is April 25, 2022, not September 12, 2022. If this Court does not reverse on Issue One but does reverse on Issue Two, Tippets's new discharge date should be February 24, 2022.

Respectfully submitted this 18th day of October, 2021.

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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 4,535, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ James Reavis
JAMES REAVIS

## APPENDIX

## CERTIFICATE OF SERVICE

I, James Richard Reavis, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 10-18-2021:

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