IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 21-0409

STATE OF MONTANA,

Plaintiff and Appellee,

v.

STEVEN WAYNE KEEFE,

Defendant and Appellant.

APPELLANT'S REPLY BRIEF

On Appeal from the Montana Eighth Judicial District Court, Cascade County, The Honorable Judge Amy Eddy, Presiding.

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INTRODUCTION

This case concerns whether a man who has demonstrated a capacity for change and an actual history of rehabilitation, such that the purposes of punishment have been met by the time he has already served, can nonetheless be subjected to a sentence that "forswears altogether the rehabilitative ideal." *Graham v. Florida*, 560 U.S. 48, 74 (2010), as modified (July 6, 2010); *see also State v. Keefe*, 2021 MT 8, ¶ 53, 403 Mont. 1, 23, 478 P.3d 830, 844 (McGrath, C.J., concurring). After a first resentencing where the court refused to consider his post-offense work and maturation, Mr. Keefe found himself back before the District Court to vindicate that rehabilitative ideal. In reviewing the record, the District Court found that the State conceded it was unable to prove that Mr. Keefe was irreparably corrupt and therefore eligible for a life without a parole sentence, which the State does not contest in its Response. July 16, 2021 Hr'g Tr. at 36–37, App. at A-006; Resp. at 19–20. The court nonetheless crafted a sentence that would all but guarantee that Mr. Keefe would die in prison.

Below, the District Court erred in two ways. First, by failing to follow this Court's mandate to resentence Mr. Keefe, and instead only considering the parole exemption. Second, by ordering a sentence that does not offer Mr. Keefe parole eligibility for nearly two decades in violation of the state and federal constitutions. Despite the State's argument, Mr. Keefe's position has not changed: he is seeking a

meaningful opportunity at release. This Court should fulfill the Constitutional guarantee to the same and correct the District Court's error.

ARGUMENT

The District Court failed to follow this Court's mandate in *State v. Keefe*, 2021 MT 8, 403 Mont. 1, 478 P.3d 830. This error, which on its own warrants reversal, in turn resulted in a sentence that failed to offer Mr. Keefe the meaningful opportunity at release to which he is constitutionally entitled. In its Response, the State mischaracterizes Mr. Keefe's current argument, as well as his argument in prior proceedings, and misconstrues *Jones v. Mississippi*, 141 S. Ct. 1307 (2021) to argue that this Court should not consider Mr. Keefe's constitutional claims and that there was otherwise no error below. Both the record and the law compel reversal.

I. The District Court's Jurisdiction Was Not Limited by Mr. Keefe's Prior Requests for Relief, which Sought a Meaningful Opportunity for Release.

Below the District Court erroneously found that this Court's remand "for a new resentencing hearing," *Keefe*, at ¶ 30, limited its jurisdiction to striking the parole exemption. July 16, 2021 Hr'g Tr. at 7. At the hearing, the District Court explained that given Mr. Keefe's prior requests for relief in his initial Petition for Post-Conviction Relief and direct appeal to this Court, the court's jurisdiction was limited to considering the parole exemption. July 16, 2021 Hr'g Tr. at 7. Finding that the State conceded it could not meet its burden to show that Mr. Keefe was

irreparably corrupt and therefore eligible for a parole restriction, the District Court reasoned that there was no need for a hearing, and instead invited Mr. Keefe to provide an offer of proof. *Id.* Limiting the hearing as such contravened this Court's mandate, which did not place limitations on any determined sentence, but instead found that "Keefe is entitled to a new resentencing hearing which appropriately considers the *Miller* factors." *Keefe*, at ¶ 30. This jurisdictional error, on its own, violated Mr. Keefe's state and federal constitutional rights and warrants reversal. *See* U.S. Const. amend. XIV; Mont. Const. art. II, §§ 17, 34; Mont. Const. art. VII, §§ 1, 2; Opening Br. at 17–21.

The State responds by repeating the District Court's mistake, arguing that Mr. Keefe's prior request for relief limited this Court's remand. In the process, the State misconstrues the record, Mr. Keefe's arguments, and the law as applied to them.

The State, similar to the District Court, insists that the scope of remand was limited to solely provide for the striking of the parole exemption to correct the *Miller* violation due to Mr. Keefe's prior argument. Resp. at 21–22. However, such a limitation is contrary to this Court's order in this case and its jurisprudence under *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 577 U.S. 190 (2016). In *Steilman v. Michael*, 2017 MT 310, ¶ 3, 389 Mont. 512, 513, 407 P.3d 313, 315 this Court found that "de facto life without parole sentences" (i.e., lengthy sentences although without a parole exemption) can still trigger *Miller's* protections.

Id. Nothing in *Jones* changes that conclusion. *Steilman*'s holding, that merely striking the parole exemption may be insufficient to comply with *Miller* and *Montgomery* (as it is here), stands. And the Court should reverse.

Additionally, the State's argument that remand is limited by Mr. Keefe's prior request for a parole hearing is belied by the record, which shows that Mr. Keefe has also consistently asked for a meaningful opportunity of release. The State ignores the consistent and repeated argument from Mr. Keefe that his sentence must offer a "meaningful opportunity at release" during post-conviction proceedings, Petition for Post-Conviction Relief, Dkt. No. 1 at 12, and during the first re-sentencing. Sentencing Mem., Dkt. No. 59 at 7. Indeed, his post-conviction petition had entire sub-heading devoted to how his "Consecutive Sentences Fail to Provide a Meaningful Opportunity for Release, Violating the Eighth Amendment." Petition for Post-Conviction Relief, Dkt. No. 1 at 12.

Even assuming there was ambiguity regarding the substance of what meaningful release required, Mr. Keefe directly clarified the issue and his request at some length before this Court in the 2020 oral argument for *State v. Keefe*. Opening Br. at 17–18. After being asked directly by Justice Sandefur why simply striking a parole exemption was insufficient to cure the constitutional violation, counsel explained that "[t]he court would need to look at the practical effect and if Mr. Keefe is not given a meaningful opportunity to obtain release to be paroled then there's no

difference[.]" Oral Argument, *State v. Keefe*, No. 19-0368, 33:04–34:00, available at: https://youtu.be/sP9ZoHlV2V8?t=1982. Further, counsel specifically noted, "all of the consecutive sentences, [] is what gives rise to the problem that we are highlighting." *Id.* After hearing these arguments, this Court reversed and remanded for resentencing. *Keefe*, at ¶ 30 (remanding with instruction that "Keefe is entitled to a new resentencing hearing which appropriately considers the *Miller* factors").

As briefed, when this Court explicitly limits the court's jurisdiction on remand to only strike a particular provision it will explicitly say so. Opening Br. at 17–18; *see, e.g., State v. Brooks*, 2010 MT 226, ¶ 22, 358 Mont. 51, 56, 243 P.3d 405, 408 (clarifying "when . . . we remanded to the District Court, we did not remand for resentencing. Instead we remanded the case with the specific instruction that the District Court clarify or modify Brooks' sentence"). No such limitations were placed here, and the District Court, therefore, erred in limiting itself to striking the parole provision. *Compare State v. Olivares-Coster*, 2011 MT 196, ¶ 22, 361 Mont. 380, 386, 259 P.3d 760, 765 (remanding to the District Court with directions to strike the 60-year parole restriction), *with Keefe*, at ¶ 30 (remanding with instruction that "Keefe is entitled to a new resentencing hearing which appropriately considers the *Miller* factors").

Further, when a sentence is vacated and remanded for de novo sentencing, the resentencing court is not bound by what occurs before the vacatur. *See Pepper v.*

United States, 562 U.S. 476, 507–08 (2011) (explaining the law of the case doctrine does not apply after a sentence had been vacated). In *Pepper*, the Supreme Court declined to find that a downward departure applied by the original judge had to be applied upon resentencing. *Id.* The Court explained that the remand "set aside" the "entire sentence" and remanded for de novo resentencing, and "even assuming, *arguendo*, that the original sentencing court's decision to impose a 40-percent departure was at one point law of the case, [the vacating and remanding of the sentence] effectively wiped the slate clean." *Id.* at 507. The Court noted that the mandates were "'general remand[s] for resentencing,' which 'did not place any limitations on the discretion of the newly assigned district court judge in resentencing [the defendant].'" *Id.* at 506 (quoting *United States v. Pepper*, 570 F.3d 958, 963 (8th Cir. 2009)). Mr. Keefe's previous requests for relief did not constrain the District Court after this Court's remand "wiped the slate clean," and vacated the sentence with the instruction to resentence after a proper *Miller* hearing.

The State maintains that Mr. Keefe's argument fails because the proceedings comported with the Supreme Court's recent jurisprudence under *Jones.* Resp. at 19–23. This argument is a red herring. First, the State mischaracterizes Mr. Keefe's argument. The State mistakenly claims that Mr. Keefe is challenging the District Court's hearing because "he should have been allowed to present more evidence of his rehabilitation through religious advisors and therapists." Resp. at 22. However,

this is not Mr. Keefe's issue. Mr. Keefe is challenging the District Court's failure to follow this Court's full mandate on remand because it erroneously found that the remand limited its jurisdiction to solely striking the parole exemption as a remedy. Opening Br. at 19–20.[1, 2]

The State contends that *Jones's* affirming "the extensive discretion of a sentencing court" under *Miller* supports the constitutionality of his sentence and sentencing proceeding. Resp. at 20. This argument suffers from a misapplication of *Jones*. The discretion referred to in *Jones* concerns courts' ability to depart from "magic words" in finding that a juvenile offender is eligible for a life without parole sentence. *Jones*, 141 S. Ct. at 1320 ("But the Court did not suggest that those discretionary sentencing regimes required some kind of sentencing explanation."). Yet, eligibility is not the issue here.

However, what is pertinent for Mr. Keefe is that after *Jones* it is still true that sentencing "a child whose crime reflects transient immaturity to life without parole

[1] The District Court did not decline to hear the testimony on the basis that it was duplicative as the State suggests. Resp. at 12. Instead, the court did not find any reason to hear additional evidence because it found the state could not meet its burden to prove that Mr. Keefe was eligible for a life without parole sentence. July 16, 2021 Hr'g Tr. at 36–37; App. at A-006.

[2] The State also mischaracterizes Mr. Keefe's presentation at the second resentencing as "changing course" from his prior representations that he would not present duplicative testimony. Resp. at 22. Neither of the noticed witnesses, neither Mr. Ziegler nor Mr. Conrad, testified at the first hearing. While the first hearing was focused on displaying Mr. Keefe's exceptional record of rehabilitation while in prison, in the second hearing Mr. Keefe would have presented what this rehabilitation meant for his prospects for successful reentry if released. *See* Sentencing Mem. Dkt. No. 102 at 27–29. In his proffer of evidence, Mr. Rowan Conrad would have talked about the skills Mr. Keefe developed regarding de-escalation, and the community that would be of assistance to Mr. Keefe upon reentry. July 16, 2021 Hr'g Tr. at 8; Sentencing Mem., Dkt. No. 102. at 29. Mr. Ziggy Ziegler would have testified about his experience with re-entry services, and give insight into the "network of support" that Mr. Keefe would have upon re-entry. July 16, 2021 Hr'g Tr. 9.

. . . is disproportionate under the Eighth Amendment." *Jones*, 141 S. Ct. 1307, 1314 n.2 (quoting *Montgomery*, 577 U.S. at 211). Contrary to the State's suggestion, *Jones* does not permit a District Court to sentence a juvenile offender who is not irreparably corrupt to a sentence that does not offer a meaningful chance at release. Here, where the District Court agreed that the State was unable to prove that Mr. Keefe was irreparably corrupt and therefore eligible for a life without a parole sentence, the *Miller* error is salient. July 16, 2021 Hr'g Tr. at 36–37; App. at A-006; *Jones*, 141 S. Ct. 1307, 1314 n.2 (reiterating that *Miller "*does not leave States free to sentence a child whose crime reflects transient immaturity to life without parole").

Mr. Keefe recognizes the complexity of this case's journey. Other state courts of last resort dealing with similarly complex *Miller* resentencing have had to address a District Court's failure to institute a sentence under *Miller* even after an initial *Miller* remand. *See, e.g., Bear Cloud v. State*, 2014 WY 113, 334 P.3d 132 (Wyo. 2014) (Wyoming Supreme Court remanded a case for a second resentencing under *Miller* after finding the aggregate sentence triggered *Miller*'s protection despite the lack of a parole restriction). However, the failure of the District Court to follow this Court's demand under *Miller* requires reversal.

II. As Applied to Mr. Keefe, the Court Imposed a Disproportionate Sentence in Violation of Mr. Keefe's State and Federal Constitutional Rights

The District Court found Mr. Keefe amenable to rehabilitation, noted his efforts at growth and maturation, and concluded that the State conceded it could not carry its burden to show that Mr. Keefe was among the "rarest of children" eligible for a life without parole sentence. *See* Judgment at 2, 4, 6. The District Court nonetheless sentenced Mr. Keefe without offering him a "meaningful opportunity for release" as required by *Miller* and *Jones* due to its erroneous finding of limited jurisdiction. As it stands, Mr. Keefe's sentences, which all run consecutively, will not offer him a chance at parole eligibility for all counts until 2038. This sentence fails to offer Mr. Keefe, presently aged 54, a meaningful opportunity to be released and reenter society, and is unconstitutionally disproportionate.[3]

The State ignores the record and jurisprudence in arguing that Mr. Keefe's sentence is constitutional. The State also ignores all together Mr. Keefe's state constitutional arguments and critical portions of the record and attempts to distinguish controlling authorities. This Court should reject its arguments. As applied to Mr. Keefe his sentence is unconstitutional, because it fails to ensure

[3] The State says that Mr. Keefe's claim is an argument that the Eighth Amendment and *Miller* "demand that Keefe be given a sentence of 'time served' for his triple homicide." Resp. at 20. Mr. Keefe has argued that a sentence of time served or its equivalent is appropriate under Montana law. Sentencing Mem., Dkt. No. 102 at 16-33; *see also Keefe*, ¶ 53 (McGrath, C.J., concurring and dissenting). Further, the Eighth Amendment and *Miller*, which this Court embraced in *Steilman*, create a floor on any sentence, such that any sentence must offer a meaningful opportunity at release. Sentencing Mem., Dkt. No. 102 at 11–15.

"Keefe's 'hope for some years of life outside prison walls." Resp. at 28 (quoting *Montgomery*, 577 U.S. at 213).

a. This Court Can Properly Consider Mr. Keefe's As-Applied Challenge to His Sentence.

The State argues that Mr. Keefe has "waived" argument or that otherwise he should be estopped from arguing that his current sentence is unconstitutional. However, as explained above, Mr. Keefe has consistently challenged the legality of any sentence whereby he would not be offered a meaningful opportunity of relief, including as a consequence of his consecutive sentences. Specifically, Mr. Keefe argued that consecutive versus concurrent sentence structure would affect the sentence both before this Court in 2020, as well as before the District Court below. Upon hearing that the District Court believed that it was confined to dropping the parole exemption, Mr. Keefe argued that even without the parole exemption, consecutive sentencing made the sentence unconstitutional. July 16, 2021 Hr'g Tr. at 7–8, 27 (noting that "the Montana Supreme Court's opinion requires, and the US Supreme Court's jurisprudence requires the meaningful opportunity for release, which would [] require the sentences to run concurrently as they stand, not consecutively"). There is no indication of "substantial evidence of waiver" that this Court requires to refuse to hear a constitutional claim on its merits. *Fitzpatrick v. Crist* (1974) 165 Mont. 382, 386, 528 P.2d 1322, 1325.

The State also argues that Mr. Keefe should be estopped from contesting the constitutionality of his sentence based on an "inconsistent position." Resp. at 27. In addition to being factually misleading in light of Mr. Keefe's consistent argument regarding a constitutional sentence under *Miller* and *Montgomery*, as a matter of law, this argument falters. This Court has noted that the doctrine of collateral estoppel is not as strong in criminal matters, such as this, where Mr. Keefe's life and liberty are at issue. *See State v. Huffine*, 2018 MT 175, ¶ 22, 392 Mont. 103, ¶ 22, 422 P.3d 102, ¶ 22 ("Though otherwise compelling, the 'wise public policy' and efficient judicial administration rationales underlying res judicata and collateral estoppel cannot outweigh a criminal defendant's constitutional trial rights." (quoting *United States v. Pelullo*, 14 F.3d 881, 891 (3d Cir. 1994)). Further, it is inappropriate in this case, given it is not the case that "the same issue was at issue and conclusively decided on the merits in the prior litigation." *Huffine*, at ¶ 16.[4] Mr. Keefe's continued insistence that he be given a meaningful opportunity to obtain release forecloses the State's argument.

b. The State Fails to Demonstrate How Mr. Keefe's Sentence Provides a Meaningful Opportunity at Release.

Mr. Keefe's sentence fails under the standards in *Miller*, *Montgomery*, and *Jones* because it does not offer Mr. Keefe a meaningful opportunity at release. *See*

[4] In the very criminal case cited by the State, this Court declined to apply judicial estoppel. Resp. at 27 (citing *State v. Darrah*, 2009 MT 96, ¶ 12, 350 Mont. 70, ¶ 12, 205 P.3d 792, 794).

Opening Br. at 21–27. Setting aside the Department of Corrections calculation of Mr. Keefe's earliest possible release date, applying Montana sentencing calculation and parole eligibility laws show that he is not eligible for release for more than a decade from now, which fails to offer him the "opportunity for redemption and a hope of release." *Steilman*, ¶ 21, Opening Br. at 21–27. The State's contrary argument falls flat. First, the State attempts to cast Mr. Keefe's argument regarding the practical implications sentence as "speculation". Resp. at 24. Second, the State incorrectly applies the Supreme Court's guidance in *Jones* to attempt to show this sentence is constitutional under *Miller.* Resp. at 20–21.

Contrary to the State's claim that Mr. Keefe's argument relies on "speculation" regarding his parole eligibility, Resp. at 24, Mr. Keefe presented direct evidence to the court regarding how the "practical effect" of sentencing laws made his sentence unconstitutional. Resp. at 27. Mr. Keefe included in his sentencing memorandum that the Department of Corrections had estimated his total good-time served to be 11,891. Dkt. No. 102 at 15. Regarding a parole eligibility calculation, Mr. Keefe noted to the District Court that he had received notice from record officials from the Montana State Prison that its "tentative estimate was that he would not be eligible for parole until 2034 at the earliest,"[5] further clarifying that "[release

[5] Under Mont. Admin. R. 20.25.305, the Department of Corrections is the authority in charge of calculating parole eligibility for the Montana Board of Pardon and Parole.

in] 2034 is if the sentences were to run consecutively as they currently stand versus concurrent." July 16, 2021 Hr'g Tr. at 34–35.

It was the District Court that based its sentence on a "guess" regarding whether the board has the power to commence the other sentences in Counts III & IV.[6] July 16, 2021 Hr'g Tr. at 32–33. In doing so, the District Court relied on the State's witness, Tim Hides who testified that Mr. Keefe could be eligible on the other consecutive sentences because the Parole Board can "commence" consecutive sentences. *Id.*, Tr. at 34. Yet, at the hearing, Tim Hides conceded that his testimony amounted to guesswork during the following cross-examination exchange:

> Q [Counsel for Keefe] So you did not do an exact analysis of the amount of time that Mr. Keefe could potentially be eligible for?
>
> A [Tim Hides] I can't, no. I couldn't do that. I did, like I said, a rough estimate based on what I knew about that system. I could be – he could be eligible now. But what I was basing it on is the eligibility with the three, the 12 and a half, 12 and a half, 12 and a half.
>
> Q So you're effectively guessing as to the amount of good time credit that he would be eligible for?
>
> A Yes. I am giving you my best guess, yes.

[6] The State repeats the mistake in failing to look at the practical application of the sentence in noting that Mr. Keefe has waived parole hearings. Resp. at 25 n. 9. At this time, Mr. Keefe is only eligible for Counts I and II.

July 16, 2021 Hr'g Tr. at 33.[7] Mr. Hides' testimony directly contradicts the administrative rules, which provide that the Parole Board's ability to "commence counts" is related to when "the offender the offender receives a consecutive sentence after reception at prison and after a hearing panel makes an initial ruling on the offender's parole on the original sentence." Mont. Admin. R. 20.25.305. And Mr. Keefe told the District Court that Hides' testimony was directly contradicted by the Montana Department of Corrections' tentative estimate that he would not be eligible for parole until 2034. July 16, 2021 Hr'g Tr. at 34–35.[8]

The District Court did not decline to engage in this analysis for lack of evidence or argument from Mr. Keefe before it, but because the court believed it could only consider the parole exemption. July 16, 2021 Hr'g Tr. at 7. However, if the District Court had engaged in the practical application that *Steilman* instructs using the information it had at its disposal, it is clear that Mr. Keefe's parole eligibility on the entire sentence is nearly two decades away.

On each life sentence, Mr. Keefe is not eligible for parole until having served 30 years, minus good time. § 46-23-201, MCA (1985). In addition, he will have to serve at least 12.5 years until he is parole eligible for the combined term-of years

[7] The State did not give notice to Mr. Keefe regarding the scope of Mr. Hides's testimony, namely that it would include conclusions regarding Mr. Keefe's parole eligibility. At the previous hearing, Mr. Hides's testimony was directed to Mr. Keefe's presentencing investigation report. April 18, 2019 Hr'g at 35–50.
[8] And even if true, this would be an inappropriate delegation of the District Court's duty to craft a constitutional sentence. Opening Br. at 22 n.6.

sentences on the burglary charge and the four weapons enhancements, minus good time.[9] Currently, Mr. Keefe has served 35 years in prison and has accrued approximately 11,891 days good time (approximately 32.5 years), given that Mr. Keefe will continue to earn day for day good time, he will be parole eligible on all counts after serving approximately 17.5 years from the time of the July 16, 2021 sentencing order. This means that Mr. Keefe would be parole eligible for all counts at the age of 71. Such a term is akin to "the prospect of geriatric release," and fails to provide "a meaningful opportunity to demonstrate maturity and rehabilitation required to obtain release and reenter society." *State v. Null*, 836 N.W.2d 41, 71 (Iowa 2013).

Further, the State attempts to argue that the U.S. Supreme Court's opinion in *Jones* shows that Mr. Keefe's sentence is constitutional, arguing that "[according to *Jones*] all that is required is that the district court consider the hallmarks of youth and craft a sentence." Resp. at 21. Yet when *Jones* rejected the "magic words" requirement, it maintained the substantive guarantee and therefore Mr. Keefe's as-applied challenge. Contrary to the State's suggestion, *Jones'*s reiteration that sentencing courts are given discretion in considering the *Miller* factors does not relieve the District Court of its error because it is still unconstitutional to sentence

[9] Given the repeal of § 46-18-404, MCA (1993), the non-dangerous versus dangerous offender designation does not apply, and therefore Mr. Keefe has to serve one-fourth of the term-of-years sentences before parole eligibility. *See State v. Wilson* (1996) 279 Mont. 34, 41, 926 P.2d 712, 716; § 46-23-201, MCA.

"a child whose crime reflects transient immaturity to life without parole." *Jones*, 141 S. Ct. at 1315 n. 2.

As explained *supra*, in refining *Miller* and *Montgomery*, *Jones* shifted the focus of the constitutional scrutiny away from a particular process to be applied by courts and towards the substantive guarantee. As explained by Justice Sotomayor, "the Court leaves open the possibility of an 'as-applied Eighth Amendment claim of disproportionality.'" *Id.* at 141 S. Ct. at 1337 n. 6. (Sotomayor, J., dissenting) (citations omitted). For an offense committed by a juvenile, an as-applied challenge should be successful where, as here, it pertains to "a child whose crime reflects transient immaturity." *Montgomery*, 577 U.S. at 211. Despite the State's claim, *Jones* does not allow for the District Court to sentence Mr. Keefe to a disproportionate sentence.

The State is also mistaken in its discussion of this Court's ruling in *Steilman v. Michael*. Resp. at 28–29. The State rightly posits that "*Steilman* concerned whether a term of years sentence brought a defendant within the protections of *Miller*," yet incorrectly concludes that *Steilman* says nothing about "what constitutes an appropriate sentence under *Miller* after a District Court considers the mitigating circumstances of youth." Resp. at 28. It is this Court's finding in *Steilman* that a sentence other than a formal sentence of life without parole can implicate the protections of *Miller*, which shows how Mr. Keefe's sentence can violate *Miller* and

Montgomery as a de facto life without parole sentence even without the parole exemption. *Steilman*, ¶ 22.

The District Court had an opportunity to right a constitutional wrong. Presented with a man who had reformed himself and for whom the purposes of punishment had been met already, the court had a duty under state and federal law to impose an appropriate sentence. Misunderstanding its remit, the court below failed to craft a constitutional sentence, instead merely striking a parole restriction and leaving Mr. Keefe in prison for what will likely be the remainder of his life. That decision violates state and federal law, and must be reversed.

CONCLUSION

For the foregoing reasons, as well as those in the opening brief, Mr. Keefe requests that this Court grant him relief.

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March 16, 2022

CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that this Appellant's Opening Brief is printed with proportionately-spaced Times New Roman typeface of 14 points; is double spaced except for lengthy quotation or footnotes, and does not exceed 5,000 as allowed per Mont. R. App. P. 11 excluding the Table of Contents, the Table of Authorities, Certificate of Service, and Certificate of Compliance as calculated by my Microsoft Word software.

Dated this 16th date of March 2022.

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