

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0495

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

JESSE JAMES FINLEY,

Defendant and Appellant.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana Twentieth Judicial District Court,  
Lake County, The Honorable James A. Manley, Presiding

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## **STATEMENT OF THE ISSUES**

1. The State concedes the Appellant was entitled to a sentence reduction, upon revocation of a deferred imposition of sentence pursuant to Mont. Code Ann. § 46-18-203(7)(b), of 1,293 days of elapsed time and 431 days of incarceration served in a detention center, for a total of 1,724 days.

2. Was the time the Appellant voluntarily spent in a boot camp during a period of deferred imposition of sentence properly excluded from credit for time served in a “detention center” under Mont. Code Ann. § 46-18-203(7)(b)?

## **STATEMENT OF THE CASE**

On July 21, 2010, the Appellant, Jesse Finley (Finley), pleaded guilty to attempted sexual assault, in violation of Mont. Code Ann. § 45-5-502. (District Court Documents (Docs.) 47, 48 at 7-8.) Finley and the State resolved the charges in this case, DC 09-119, with a global plea agreement that included resolution of multiple charges in DC 10-62.<sup>1</sup> (Doc. 48.)

The district court issued three judgments in DC 09-119. (Docs. 53, 70, 91.) The first two judgments deferred imposition of Finley’s sentence and the third

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<sup>1</sup> This appeal is taken from the judgments in DC 09-119, so no documents are included from the district court record in DC 10-62. However, the documents in this case, DC 09-119, reference some of the activities in DC 10-62 and are cited accordingly.

imposed the sentence that he now appeals. (*Id.*) The district court's first judgment deferred imposition of Finley's sentence for four years and awarded him 328 days of credit. (Doc. 53.) Pursuant to the global plea agreement, the district court imposed a four-year suspended sentence in DC 10-62 to run consecutive to the deferral period in DC 09-119. (Doc. 52.) Finley's first deferral period in DC 09-119 began on September 29, 2010. (Docs. 52-53.)

On August 1, 2011, the State filed a petition to revoke. (Doc. 59.) On November 2, 2011, the district court revoked Finley's sentence in DC 10-62 and sentenced him to a four-year commitment to the Department of Corrections (DOC). (Doc. 69.) In DC 09-119, the district court again deferred the imposition of Finley's sentence, which was the second judgment in this case. (Doc. 70.) The district court again ran the suspended sentence in DC 10-62 and the deferred imposition of sentence in DC 09-119 consecutive to each other, but this time reversed the order: running the DOC sentence first, followed by the deferred imposition. (*Id.*) Finley immediately began serving his sentence in DC 10-62. (Doc. 72 at 1-2.)

On September 4, 2015, Finley discharged his sentence in DC 10-62 and began the four-year deferral period in DC 09-119. (*Id.* at 2.) On August 16, 2019, the State filed a petition to revoke Finley's deferred imposition of sentence, alleging violation based on various new criminal charges. (Doc. 73.) Due to

multiple continuances requested by Finley, the revocation proceedings were delayed for a year. (Docs. 78-80, 82-83.) On August 19, 2020, the district court issued its third judgment in DC 09-119. (Doc. 91.) The district court sentenced Finley to 20 years with no time suspended. (*Id.*; 8/19/20 Tr. at 9.) The district court reduced Finley's sentence by 161 days for time served plus two years for elapsed time, for a total sentence reduction of 891 days. (*Id.*)

On appeal, Finley argues the district court imposed an illegal sentence because it should have given him credit for a total of 522 days for pretrial incarceration and 1,293 days for elapsed time, for a total of 1,815 days. (Appellant's Brief (Br.) at 10-21.) Finley relies on various statutes to support his argument. (*Id.*) However, sentence reduction for time served in revocation cases is governed by Mont. Code Ann. § 46-18-203(7)(b). Based on this authority, the State concedes Finley is entitled to a sentence reduction for more days than the district court provided. However, Finley is not entitled to the time he spent in the Treasure State Boot Camp (Boot Camp) during the first period deferring the imposition of his sentence in DC 09-119.

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## STATEMENT OF THE FACTS

### **I. The underlying offense, judgment of conviction, and first deferred imposition of sentence in DC 09-119**

On August 14, 2009, the State charged Finley in DC 09-119 with felony sexual intercourse without consent, in violation of Mont. Code Ann. § 45-5-503. (Docs. 2-4.) The State alleged Finley, who was 19 years old at the time of the offense, had sex with a 13-year-old girl. (Docs. 2, 4, 50 at 1.) Finley was arrested on August 6, 2009. (Doc. 50 at 1.) On January 12, 2010, Finley posted bond and was released on various conditions. (Docs. 30-31, 50 at 1.)

On March 29, 2010, the district court revoked Finley's bond and issued a warrant for his arrest. (Docs. 37-39.) Finley was arrested the same day. (Doc. 39.) Finley had violated several conditions of his release with conduct that resulted in multiple new criminal charges in DC 10-62. (Doc. 36.) In that case, the State charged Finley with felony aggravated assault, in violation of Mont. Code Ann. § 45-5-202(1), felony criminal endangerment, in violation of Mont. Code Ann. § 45-5-207(1), felony assault on a minor, in violation of Mont. Code Ann. § 45-5-212, and felony partner or family member assault (PFMA), in violation of Mont. Code Ann. § 45-5-206(1)(a). (Doc. 48 at 3-4.)

The charges in DC 09-119 and DC 10-62 were resolved with a global plea agreement. (Doc. 48.) In DC 09-119, Finley agreed to plead guilty to the amended offense of attempted sexual assault, in violation of Mont. Code Ann. § 45-5-502.

(*Id.* at 7-8.) In DC 10-62, Finley agreed to plead guilty to felony PFMA, third offense, in violation of Mont. Code Ann. § 45-5-206(1). (*Id.* at 8-9.) The State agreed to dismiss the three remaining charges in DC 10-62. (*Id.* at 9.) The parties agreed to a joint sentencing recommendation and various conditions. (*Id.* at 9-16.) On July 21, 2010, the district court accepted Finley's guilty plea pursuant to the agreement. (Doc. 47.)

The district court sentenced Finley in both matters on September 29, 2010. (Doc. 52.) In DC 09-119, the district court deferred imposition of the sentence for four years and gave Finley credit for 328 days of time served.<sup>2</sup> (Docs. 52-53 at 2.) The district court designated Finley a Tier I sex offender and recommended Finley be considered for placement in Boot Camp. (*Id.*) In DC 10-62, the district court sentenced Finley to a four-year suspended commitment to the DOC, to run consecutive to the sentence in DC 09-119. (Doc. 52.) The district court imposed various conditions during the deferred and suspended portions of Finley's sentences. (Docs. 52-53.) The district court also recommended Finley apply for placement at Boot Camp. (Docs. 52, 53 at 2.) Pursuant to a joint motion, the

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<sup>2</sup> Neither the judgment nor the minutes of the sentencing hearing include the basis for the calculation of 328 days, and Finley did not provide a transcript of the sentencing hearing. (*See* Docs. 52-53.) The presentence investigation included 328 days but has been revised with a marker to reflect 349 days. (Doc. 50.)

district court later amended the judgment to include the “Booster After Care Program.” (Docs. 54-55.)

After sentencing on September 29, 2010, Finley began serving the first period of deferred imposition of sentence in DC 09-119 and was released. (*See* Docs. 52-53.) Finley was accepted to Boot Camp; he began the program on March 2, 2011, and he was discharged on May 31, 2011, having spent a total of 91 days. (Doc. 58 at 1.)

## **II. The first revocation proceeding and 2011 judgment**

On July 29, 2011, DOC filed a report of violation and alleged Finley had committed 13 violations. (Doc. 58.) The probation officer recommended the deferred sentence in DC 09-119 be revoked and Finley be sentenced to 20 years in the Montana State Prison (MSP) with 10 suspended, and the sentence in DC 10-62 be revoked and Finley be sentenced to a four-year DOC commitment with no time suspended. (Doc. 58 at 4-5.)

The State filed a petition to revoke. (Doc. 59.) On August 2, 2011, the district court issued a warrant for Finley’s arrest, and the return was filed on September 14, 2011, which indicated Finley was in custody. (Docs. 60, 62.) Finley denied the allegations in the revocation petition, and the district court held a hearing on the merits on November 2, 2011. (Docs. 66, 69.) On this warrant,

Finley had spent 49 days in the county detention facility. (*See* Docs. 60, 62, 72; 11/2/11 Tr. at 10-11.)

During the hearing, Finley admitted to four violations. (11/2/11 Tr. at 4-8.) The district court found Finley's admissions satisfied the State's burden to revoke his probation in both DC 09-119 and DC 10-62. (*Id.* at 8.) The State informed the district court of a joint recommendation, to which Finley's counsel concurred. (*Id.* at 8-10.) The joint recommendation in DC 10-62 was to impose a four-year DOC commitment with no time suspended, with credit for time in custody but no credit for time on probation. (*Id.* at 9.) In DC 09-119, the parties recommended the district court again defer imposition of sentence for four years, consecutive to the sentence in DC 10-62, with no credit for time served. (*Id.*) The parties agreed to send Finley back to Boot Camp in the event conditional release was granted. (*Id.*)

The district court noted this was a substantial departure from the DOC recommendation. (*Id.* at 9-10; Doc. 58 at 4-5.) However, the district court granted the petition to revoke and rendered judgment consistent with the joint recommendation. (11/2/11 Tr. at 10-11.) The district court imposed the same conditions for any conditional release, including Boot Camp in DC 10-62, and awarded credit for time served, but also specified Finley did not "receive any credit for time on probation while not in custody due to the violation of the terms of his probation." (*Id.* at 11-12; *see also* Doc. 70 (regarding only DC 09-119).)

On November 2, 2011, Finley began serving his sentence in DC 10-62. (11/2/11 Tr. at 10-11.) Finley was transported to MSP where he stayed until September 29, 2014. (Doc. 72 at 1.) On October 7, 2014, Finley was paroled to the Polson Probation and Parole Office. (*Id.*) On January 26, 2015, Finley absconded from supervision for two days. (*Id.*) On January 28, 2015, Finley was booked into the Missoula County Jail for that parole violation, where he remained until March 25, 2015. (*Id.*)

On March 25, 2015, Finley was transported to the Boot Camp. (*Id.*) After 111 days, Finley was terminated from the program after he was found guilty of intentionally obstructing, hindering or impeding staff, and possession of unauthorized clothing or identification. (*Id.*) On July 14, 2015, Finley was transported to MSP, where he stayed until he was discharged on September 4, 2015. (*Id.*) On that date, Finley had discharged his sentence in DC 10-62 and began serving the deferred imposition of sentence in DC 09-119. (*Id.* at 2.)

### **III. The second revocation proceeding and judgment in 2019**

On August 9, 2019, Finley was arrested by the Lake County Sheriff's Office on a probation hold in DC 09-119, pursuant to Mont. Code Ann. § 46-23-1012, and bond was set at \$50,000. (Doc. 71.) On August 15, 2019, DOC filed a report of violation. (Doc. 72.) The four allegations were based in part on various new

criminal charges filed against Finley, including two counts of criminal endangerment, and other charges of reckless driving and disorderly conduct. (*Id.* at 3.) On August 16, 2019, the State filed a petition to revoke Finley's deferred imposition of sentence in DC 09-119. (Docs. 72-73.) Finley entered general denials to all the allegations during a hearing on August 28, 2019. (8/28/19 Tr. at 2.)

On September 17, 2019, Finley posted bond and was released. (Doc. 79.) On this hold, Finley had served 39 days prior to release. (Docs. 71, 79.) Pursuant to Finley's requests, the district court continued the merits hearing twice and later stayed the revocation proceedings to accommodate a criminal case based on conduct that also supported one of the allegations in the report of violation. (*Id.* at 2; Docs. 78, 80, 82-83.) The district court denied a third motion to continue by Finley and held the merits hearing for the revocation petition on August 12, 2020. (8/12/20 Tr. at 4; Doc. 87.)

The State provided testimony from Finley's probation officer, Raymond Czak (Czak), who supervised Finley from January 2018 to September 2019. (8/12/20 Tr. at 5-6.) Czak testified the petition to revoke, which was filed on August 15, 2019, was based primarily on a report of criminal endangerment. (*Id.* at 6; Doc. 72.) Law enforcement had pulled Finley over after he tried to pull the steering wheel out of his mother's hand while she was driving on the highway. (8/12/20 Tr. at 6.) For this conduct, Finley was arrested on August 9, 2019, and

charged with criminal endangerment in DC 19-225. (*Id.* at 6-7, 28; Doc. 72 at 4.)

Trial was still pending at the time of the merits hearing. (*Id.*)

Czak testified further that Finley was booked into the Flathead Tribal jail for reckless driving on May 1, 2019, for driving his motorcycle 105 miles per hour. (8/12/20 Tr. at 7, 14-15.) Finley pleaded guilty to that offense. (*Id.* at 14-15.) On June 14, 2019, Finley was cited for disorderly conduct by the Flathead Tribal Police, and he was sentenced to 10 days in jail, suspended for six months. (8/12/20 Tr. at 7, 15.) This charge was based on a heated argument Finley had with his supervisor at work, which resulted in his termination. (*Id.* at 11-12.) On August 9, 2019, Finley tested positive for THC use. (*Id.* at 7; Doc. 72 at 2.)

Czak recommended Finley's deferred imposition of sentence in DC 09-119 be revoked and that the district court impose 20 years at MSP. (*Id.* at 7.) Czak said Finley should be granted 2 years of street time.<sup>3</sup> (*Id.* at 7-8.) This was based in part on Finley's conduct beginning in March 2019, which Czak said indicated a community safety issue based on Finley's rage issues. (*Id.*) On March 20, 2019, while Finley was walking through a crosswalk, he walked up to a car and pounded on the hood and had a verbal altercation with the driver, who had a green light. (*Id.* at 8, 18; Doc. 72 at 3.) Czak testified further that on March 21, 2019, the day

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<sup>3</sup> "Street time" is a phrase often used to refer to the statutory term of art "elapsed time," as provided in Mont. Code Ann. § 46-18-201(7)(b).

after the road rage incident, Finley's pregnant girlfriend came to Czak's office and reported that Finley had assaulted her. (8/12/20 Tr. at 10-11; Doc. 72 at 3.) She had an egg-size bruise on her forehead, so Czak called an ambulance. (*Id.*) Czak also discovered damage to the inside of her car. (*Id.*) The girlfriend refused medical treatment and refused to cooperate with law enforcement. (*Id.*)

Czak supervised Finley from January 2018 until September 2019. (8/12/20 Tr. at 6, 12-13.) Czak testified he had no issues with Finley prior to March 20, 2019, and there was nothing in the file that indicated any problems prior to Czak becoming his supervisor. (*Id.* at 18, 24-25.) However, he testified Finley's conduct exhibited a history of violent behavior throughout his adult life, which included various periods of supervision pursuant to multiple criminal convictions. (*Id.* at 21-23.) Czak explained he stopped supervising Finley on September 3, 2019, when Finley discharged his deferral period in DC 09-119. (*Id.* at 6, 14, 17.) However, the petition to revoke was filed prior to that discharge, on August 16, 2019. (Doc. 74.)

The district court found the State had proved the allegations in its petition and revoked the deferred imposition of sentence in DC 09-119. (8/12/20 Tr. at 27.) The district court vacated the trial date in DC 19-225, the pending criminal endangerment charges against Finley, and scheduled sentencing on the revocation for the next week. (*Id.* at 28.)

On August 19, 2020, the district court adopted the recommendations of DOC and the State and sentenced Finley to 20 years with no time suspended. (8/19/20 Tr. at 9-10; Doc. 91.) The district court found Finley was entitled to 2 years and 161 days of credit for time served. (*Id.*) The district court first proffered the 161 days but did not explain its basis for those days. (8/19/20 Tr. at 5.) The State agreed with this calculation. (*Id.*) Finley's counsel disagreed and requested credit for elapsed time from September 4, 2015, through March 20, 2019, which totaled 1,293 days. (*Id.* at 5-6, 7-8.) The State changed course and deferred to Czak's recommendation of two years along with the 161 days specified by the district court. (*Id.* at 8.) Finley's counsel stipulated to that calculation, and the district court awarded credit for that time. (*Id.*) In total, Finley received credit for 891 days. (*Id.*)

### **SUMMARY OF THE ARGUMENT**

The State concedes Finley is entitled to a sentence reduction of 1,293 days of elapsed time and 431 days of incarceration served in a detention center, for a total of 1,724 days. This reduction replaces the two years of elapsed time and 161 days provided by the district court. Although the State concedes to most of the days requested by Finley, the parties and the courts must apply the law as written. Despite the variety of authorities relied on by Finley, the only authority necessary

to support Finley’s sentence reduction is Mont. Code Ann. § 46-18-203(7)(b)—the only statute that specifically addresses credit in revocation proceedings.

This Court has explained that sentencing upon revocation of a suspended or deferred sentence is expressly governed by Mont. Code Ann. § 46-18-203(7)(b). It is not governed by general sentencing provisions that may apply in non-revocation cases, and nothing in this Court’s recent precedent abrogates the plain language of Mont. Code Ann. § 46-18-203(7)(b) or general statutory interpretation principles. For these reasons, Finley’s reliance on *Killam v. Salmonsén* and the general sentencing statutes considered in that opinion is misplaced. Finley is entitled to the days conceded by the State pursuant to Mont. Code Ann. § 46-18-203(7)(b).

Finley is not, however, entitled to the 91 days that he spent in Boot Camp during the first deferral period. The only argument Finley makes to support his claim is that Boot Camp was a “detention center,” pursuant to Mont. Code Ann. § 46-18-203(7)(b). But Boot Camp, which has since been repealed, was not a “detention center.” A “detention center” is defined in the local government title of the code as the equivalent of a county jail. This is consistent with sentencing statutes, including the predecessor to Mont. Code Ann. § 46-18-203(7)(b), that have used “detention center” to replace the word “jail.” Boot Camp was a voluntary program that an offender chose to enter and had the ability to leave at any time. Finley points to nothing that suggests Boot Camp was a “detention

center” under Mont. Code Ann. § 46-18-203(7)(b), and he has failed to show he is entitled to a reduction for the 91 days he spent there.

## ARGUMENT

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

“This Court reviews a district court’s decision to revoke a suspended sentence to determine whether the court abused its discretion.” *State v. Jardee*, 2020 MT 81, ¶ 5, 399 Mont. 459, 461 P.3d 108. “[R]evocation decisions involve both legal and factual findings[,] and we review a district court’s legal findings de novo and its factual findings for clear error.” *Id.* (quoting *State v. Johnson*, 2018 MT 277, ¶ 10, 393 Mont. 320, 430 P.3d 494) (internal quotations omitted). “A district court’s factual findings are clearly erroneous if they are not supported by substantial credible evidence, if the court misapprehended the effect of the evidence, or if a review of the record leaves this Court with the definite firm conviction that a mistake has been made.” *Id.*

“[T]he interpretation and construction of a statute is a matter of law and we review whether the district court interpreted and applied a statute correctly de novo.” *Id.* (quoting *State v. Triplett*, 2008 MT 360, ¶ 13, 346 Mont. 383, 195 P.3d 819).

**II. Finley is entitled to a sentence reduction for 1,293 days of elapsed time and 431 days for time served in a detention center, pursuant to Mont. Code Ann. § 46-18-203(7)(b).**

“[S]entencing after the revocation of a suspended or deferred sentence is ‘particularly and expressly’ governed by § 46-18-203, MCA.” *State v. Osborn*, 2015 MT 48, ¶ 13, 378 Mont. 244, 343 P.3d 1188 (quoting *State v. Seals*, 2007 MT 71, ¶ 15, 336 Mont. 416, 156 P.3d 15; Mont. Code Ann. § 46-18-203(7)). Credit in revocation cases is specifically addressed in Mont. Code Ann. § 46-18-203(7)(b):

If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time, consult the records and recollection of the probation and parole officer, and allow all of the elapsed time served without any record or recollection of violations as a credit against the sentence. If the judge determines that elapsed time should not be credited, the judge shall state the reasons for the determination in the order. Credit must be allowed for time served in a detention center or for home arrest time already served.

*Id.*

Finley improperly relies on authority that does not apply. The revocation credit statute, Mont. Code Ann. § 46-18-203(7)(b), is one of four statutes that address the generic concept of “credit for time served.” *See* Mont. Code Ann. §§ 46-18-201(9), -203(7), -402, -403. But Mont. Code Ann. § 46-18-203(7)(b) is the only statute that specifically addresses credit in the context of revocation cases. *See Seals*, ¶ 15 (citing Mont. Code Ann. § 1-2-102) (A particular statutory provision is paramount to a general provision.).

Part four of Mont. Code Ann. Tit. 46, ch. 18, specifically addresses “Factors That Reduce Sentence,” but those statutes do not apply to Finley’s case. Montana Code Annotated § 46-18-402 applies only to cases where a judgment is “subsequently declared invalid or that is modified during the term of imprisonment.” Montana Code Annotated § 46-18-403 specifically applies to “incarceration prior to or after conviction.” The final statute, Mont. Code Ann. § 46-18-201(9), which is included in the general statute for sentences that may be imposed, similarly refers to “credit for time served by the offender before trial or sentencing.” None of these statutes apply to Finley’s case. *See* Mont. Code Ann. §§ 46-18-201(9), -402, -403.

The State concedes to many of the days Finley seeks, but it is necessary for this Court to apply the correct law. In this revocation case, the correct law is Mont. Code Ann. § 46-18-203(7)(b) (2019).<sup>4</sup> It is not Mont. Code Ann. § 46-18-403(1), it is not Mont. Code Ann. § 46-18-201(9), and it is not *Killam v. Salmonsens*, 2021 MT 196, 405 Mont. 143, 492 P.3d 512, which interpreted and applied Mont. Code Ann. § 46-18-201(9). *Killam* did not involve a revocation proceeding, so Mont. Code Ann. § 46-18-203(7)(b) had no bearing on the outcome

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<sup>4</sup> Hereinafter, the references to Mont. Code Ann. § 46-18-203(7)(b) refer to the 2019 version of the statute because that was the statute in effect at the time of Finley’s revocation. Mont. Code Ann. § 46-18-203(12) (this section applies regardless of the date of conviction or original sentence).

of that case. Further, Mont. Code Ann. § 46-18-201(9) would have no bearing on Finley’s 2009 criminal offense because that statute applies only to criminal offenses committed after June 30, 2017. *State v. Tirey*, 2010 MT 283, ¶ 26, 358 Mont. 510, 247 P.3d 701 (the law in effect at the time an offense is committed controls the possible sentence for the offense); 2017 Mont. Laws, ch. 321, §§ 24, 44 (the bill enacting § 46-18-201(9), H.B. 133, applied only to “offenses committed after June 30, 2017”); *State v. Thomas*, 2019 MT 155, ¶¶ 3, 9, 14, 396 Mont. 284, 445 P.3d 777 (same); *State v. Wolf*, 2020 MT 24, ¶ 10, 398 Mont. 403, 457 P.3d 218 (same); *Linwood v. Salmonsens*, 405 Mont. 537, 495 P.3d 421 (2021) (same).

This Court has explained that if an “illegal sentence is challenged during a revocation proceeding held while the defendant is serving the suspended portion of the illegal sentence, the court, upon sentencing in the revocation proceeding, is constrained by the particulars of § 46-18-203(7), MCA.” *Seals*, ¶ 15. This is because revocation proceedings are civil matters and fundamentally different from the underlying criminal convictions. *State v. Howard*, 2020 MT 279, ¶ 13, 402 Mont. 54, 475 P.3d 392. Relying on authority beyond the revocation-specific statute, Mont. Code Ann. § 46-18-203(7)(b), would fail to account for these differences and unnecessarily confuse the application of the statutory scheme. *See id.*

The application of only Mont. Code Ann. § 46-18-203(7)(b) is supported by issues unique to revocation. Montana Code Annotated § 46-18-203(7)(b) is the only statute that addresses elapsed time. *See* Mont. Code Ann. §§ 46-18-201(9), -203(7)(b), -402, -403. Elapsed time only applies in revocation cases because it is the only time a defendant is in the community under supervision, and it only applies when a sentence is revoked. *See id.* The statute further provides that “[c]redit 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). This language in addition to the elapsed time addresses all the time that Finley may be entitled to due to the revocation. *See id.*

The district court gave Finley credit for two years of elapsed time and 161 days of time served. It is unclear in the record what time period the 161 days addressed, and the district court did not provide the factual or legal basis it relied on to support this calculation. Based on the particular facts presented in this record, the State concedes Finley is entitled to a sentence reduction for the days specified below, pursuant to Mont. Code Ann. § 46-18-203(7)(b). However, Finley has failed to show he is entitled to the 91 days he spent in Boot Camp during the first deferral period in DC 09-119.

**A. The State concedes Finley is entitled to 1,293 days of elapsed time.**

Generally, “[t]he law in effect at the time an offense is committed controls as to the possible sentence for the offense, as well as the revocation of that sentence.” *State v. Tirey*, 2010 MT 283, ¶ 26, 358 Mont. 510, 247 P.3d 701. However, Mont. Code Ann. § 46-18-203(12) provides: “The provisions of this section apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender’s conviction and regardless of the terms and conditions of the offender’s original sentence.” The 2019 version of Mont. Code Ann. § 46-18-203(7)(b) applies to this case because Finley’s revocation proceedings occurred in 2019 and 2020.

Finley claims elapsed time pursuant to Mont. Code Ann. § 46-18-203(7)(b), which was amended in 2017. This Court interpreted and applied those amendments in *Jardee*, ¶¶ 9-14, to determine the amount of elapsed time the defendant in that case had served. This Court explained the 2017 revisions eliminated the discretion granted to a sentencing court to generally deny elapsed time. *Jardee*, ¶ 10. “[T]he statute now requires a specific demonstration of a ‘record or recollection of violations’ in the period in question to defeat the credit.” *Id.*

Here, Finley began serving the applicable deferral period in DC 09-119 on September 4, 2015. Finley’s probation officer testified Finley committed no violations prior to March 20, 2019—about three and a half years into the deferral

period. Despite the lack of evidence of any violations prior to that date, the probation officer recommended the district court give Finley two years for elapsed time. Finley's counsel initially argued Finley should receive credit for all the time between September 4, 2015, and March 20, 2019. However, Finley's counsel later agreed to the two years of elapsed time. Neither the parties nor the district court explained this further or considered the 2017 revisions to Mont. Code Ann. § 46-18-203(7)(b).

Without agreeing with all the arguments advanced by Finley, the Attorney General's Office, on behalf of Lake County, concedes under the particular facts presented in this record that this case should be remanded to the district court to amend the judgment to give Finley credit for elapsed time in the total amount of 1,293 days. To clarify, these days would replace the two years previously granted. They would not be in addition to them.

**B. The State concedes Finley is entitled to 88 days of credit for time served in a detention center during the revocation proceedings.**

Finley served two periods of time in a detention center that are relevant to this Court's analysis of Mont. Code Ann. § 46-18-203(7)(b). Finley began serving the first deferred imposition of sentence in DC 09-119 on September 29, 2010. On August 1, 2011, the State filed a petition to revoke. On September 14, 2011, Finley was arrested on a warrant issued in DC 09-119, and he was in custody on that

warrant until he began serving his sentence in DC 10-62 on November 2, 2011. On this warrant, Finley served 49 days.

After the first revocation proceeding, the district court deferred the imposition of Finley's sentence a second time. Finley began serving that deferred period on September 4, 2015. On August 16, 2019, the State filed a petition to revoke. The State had previously arrested Finley on August 9, 2019, on a probation hold. On September 17, 2019, Finley posted bond and was released. On this hold, Finley served 39 days.

Pursuant to Mont. Code Ann. § 46-18-203(7)(b), Finley is entitled to credit for "time served in a detention center" while revocation proceedings were pending. Both of the time periods described above, which total 88 days, were "time served in a detention center." *See id.* Finley groups these days with other pretrial detention days and argues he is entitled to credit for the 88 days under Mont. Code Ann. §§ 46-18-201(9) and -403. However, Finley's reliance on that authority is misplaced. *See Seals*, ¶ 15; *Osborn*, ¶ 13; Mont. Code Ann. § 1-2-102. The appropriate statute to make this determination is Mont. Code Ann. § 46-18-203(7)(b), which specifically applies to revocation cases.

Without agreeing with all the arguments advanced by Finley, the Attorney General's Office, on behalf of Lake County, concedes under the particular facts presented in this record that Finley is entitled to credit for 88 days of time served in

a detention center while revocation proceedings were pending, pursuant to Mont. Code Ann. § 46-18-203(7)(b).

**C. Finley is entitled to 343 days for pretrial incarceration, which was given in the first judgment in an incorrect amount.**

In the initial judgment of conviction in DC 09-119, which deferred the imposition of Finley’s sentence the first time, the district court reduced Finley’s sentence by 328 days for incarceration served prior to conviction and sentencing. At that time, the district court correctly determined the days did not apply to the period that the sentence was deferred because a sentence had not yet been imposed. *See State v. McCaslin*, 2011 MT 221, ¶ 14, 362 Mont. 47, 260 P.3d 403 (citing *In re Gray*, 163 Mont. 321, 517 P.2d 351 (1973); *In re Le Desma*, 171 Mont. 54, 56-57, 554 P.2d 751, 753 (1976); *State v. Drew*, 158 Mont. 214, 217, 490 P.2d 230, 232 (1971)). However, once the district court found Finley had violated the conditions of his release and it had imposed a sentence in the August 19, 2020, judgment, Finley was entitled to the 328 days. *See Gray*, 163 Mont. at 322, 517 P.2d at 352 (interpreting predecessor statutes codified in the Revised Code of Montana 1947).

The only authority necessary to reduce Finley’s sentence by the 328 days is the original judgment and Mont. Code Ann. § 46-18-203(7)(b), which provides “[c]redit must be allowed for time served in a detention center.” It is not necessary

to reconsider any statutory authority for the original sentence reduction because the district court previously granted the 328 days. This conclusion is consistent with the plain language of Mont. Code Ann. § 46-18-203(7)(b) and this Court's opinion in *Gray*, 163 Mont. at 322, 517 P.2d at 352 (when a sentencing court revokes a deferred imposition of sentence the sentence must be reduced by the number of days served in pretrial incarceration).

However, on remand, this Court should instruct the district court to reduce Finley's sentence by 343 days rather than the 328 days referenced in the January 6, 2011, judgment. At the time of the first judgment, the district court relied on the PSI, which specified 328 days. But the record in DC 09-119 shows this number was incorrect.<sup>5</sup> On appeal, Finley argues he is entitled to 343 days for two periods of incarceration prior to conviction and sentence. The State agrees with Finley's calculation.

Finley was arrested on August 6, 2009, for the offenses in DC 09-119. Finley posted bond in DC 09-119 on January 12, 2010, and was released subject to

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<sup>5</sup> It appears this miscalculation was recognized by someone during the proceedings below because the PSI was later revised with a marker to cross out the 328 and replace it with the handwritten number of 349. (Doc. 50.)

various conditions of release. The total number of days that Finley was incarcerated during that period is 159.<sup>6</sup>

On March 29, 2010, Finley was arrested on a warrant in DC 09-119 and his bond was revoked for violating various release conditions. Finley remained incarcerated on that warrant until he was sentenced on September 29, 2010. The total number of days that Finley was incarcerated during that period is 184.

The cumulative total for both periods is 343 days.

Without agreeing with all the arguments advanced by Finley, the Attorney General's Office, on behalf of Lake County, concedes under the particular facts presented in this record that Finley, pursuant to Mont. Code Ann. § 46-18-203(7)(b) and the January 6, 2011, judgment, is entitled to credit for 343 days of time served in a detention center prior to conviction and sentencing.

**D. This Court should remand and instruct the district court to reduce Finley's sentence by the correct number of days.**

Pursuant to Mont. Code Ann. § 46-18-203(7)(b), the State concedes that Finley is entitled to a sentence reduction for 1,293 days of elapsed time and 431 days of time served for incarceration prior to sentencing and in a detention center while revocation proceedings were pending. The district court's reduction for 161

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<sup>6</sup> It is possible the district court relied on this date range to conclude Finley was entitled to 161 days in the August 19, 2020, judgment. However, this is not clear in the record.

days and two years of elapsed time should be replaced with 1,293 days of elapsed time and 431 days of time served for a total reduction of sentence of 1,724 days.

**III. Finley has failed to show his sentence should be reduced by the 91 days he served in Boot Camp during the first deferred imposition of sentence period in DC 09-119.**

If a convicted defendant violates the terms of a deferred imposition of sentence, the sentencing court may “impose any sentence that might have been originally imposed.” Mont. Code Ann. § 46-18-203(7)(a)(iv). When a sentence is imposed, “[c]redit 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). Finley did not serve any home arrest time, and his argument is only that his time spent at Boot Camp was time served in a detention center that should be counted based on the language of Mont. Code Ann. § 46-18-203(7)(b).

Finley points to nothing to support his conclusion that Boot Camp is a detention center for purposes of Mont. Code Ann. § 46-18-203(7)(b). A “detention center” is defined in Mont. Code Ann. § 7-32-2241, as “a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.” The definition of “detention center” is included in Mont. Code Ann. Tit. 7, which addresses local government. *See id.* The applicable statutes explain a detention center is a facility owned, operated, and

maintained by local governments—counties, cities, municipalities, etc.—at the local government’s expense. Mont. Code Ann. §§ 7-32-2201 to -2255. In essence, a detention center is a county or city jail. It is not a Boot Camp facility that is established, maintained, and operated by DOC.

This conclusion is supported by the predecessor statute to Mont. Code Ann. § 46-18-203(7)(b), which was codified at Mont. Code Ann. § 46-18-201(3) (1993). It provided, “Credit, however, must be allowed for jail or home arrest time already served.” *Id.* The change from jail to detention center in Mont. Code Ann. § 46-18-203(7)(b) did not change its original meaning. It was merely an act of statutory conformity. *See Gamble v. Sears*, 2007 MT 131, ¶ 59, 337 Mont. 354, 160 P.3d 537 (this Court has often held, “in interpreting a statute we must view it as a part of a whole statutory scheme and construe it so as to forward the purpose of that scheme”).

This is illustrated by a similar change to Mont. Code Ann. § 46-18-201(4)(b). Montana Code Annotated § 46-18-201(4) describes reasonable restrictions or conditions that may be imposed for suspended or deferred sentences. One of those reasonable conditions is “incarceration in a detention center not exceeding 180 days.” Mont. Code Ann. § 46-18-201(4)(b). Prior to 1999, the predecessor of this provision said, “jail time not exceeding 180 days.” Mont. Code Ann. § 46-18-201(1)(a)(ii) (1997).

Based on this authority, the “time served in a detention center” referenced in Mont. Code Ann. § 46-18-203(7)(b) applies to the jail time ordered as a condition to a deferred or suspended sentence. Nothing in Montana’s sentencing scheme supports Finley’s argument that he is entitled to credit for time he spent at Boot Camp. Reading that conclusion into the statute would undermine the plain language of the applicable statutes and this Court’s precedent. As this Court has repeatedly explained, “[t]he sentencing authority of a court exists solely by virtue of the statutory grant of power and therefore cannot be exercised in any manner not specifically authorized.” *State v. Byrd*, 2015 MT 20, ¶ 19, 378 Mont. 94, 342 P.3d 9 (quoting *State v. Lenihan*, 184 Mont. 338, 342, 602 P.2d 997, 1000 (1979)).

This Court’s opinion in *Byrd*, ¶¶ 17-20, illustrates the constraints of the statutory language as applied to this case. In *Byrd*, ¶ 1, the defendant pleaded guilty to a drug offense, and the district court stayed sentencing until the defendant completed a 12-month treatment program. The defendant completed the program but relapsed shortly thereafter. *Id.* At sentencing, the defendant requested credit for the time she spent in the treatment facility and the district court denied it. *Id.* This Court affirmed and held Mont. Code Ann. § 46-18-403(1), which allowed credit “for each day of incarceration prior to or after conviction,” did not apply to time spent in a residential treatment facility. *Byrd*, ¶¶ 17-20.

Incarceration is not defined by statute, so this Court looked to Mont. Code Ann. § 46-18-201, which sets forth sentences that may be imposed. *Byrd*, ¶ 18. In Mont. Code Ann. § 46-18-201(3)(a)(iii), district courts are permitted to impose “a term of incarceration, as provided in Title 45 for the offense, at a county detention center or at a state prison.” *Byrd*, ¶ 18. This Court explained a residential treatment facility is not a place of incarceration because the statutes limit incarceration to a detention center or state prison. *Id.* ¶¶ 18-19.

Similarly, no statutory authority supports Finley’s contention that Boot Camp is a detention center under Mont. Code Ann. § 46-18-203(7)(b). *See Byrd*, ¶¶ 17-20. The plain language of the statute shows the legislature could have included Boot Camp, like it did with home arrest, but it did not. *See* Mont. Code Ann. § 46-18-203(7)(b). The inclusion of home arrest highlights the omission of Boot Camp because the statutory authority for both programs is separate and apart from general sentencing principles. *See* Mont. Code Ann. §§ 46-18-1001 to -1006 (home arrest); Mont. Code Ann. §§ 53-30-401 to -403 (2009) (Boot Camp) (repealed).<sup>7</sup>

The unique space that Boot Camp formerly occupied in the sentencing arena further undermines Finley’s argument. This Court explained the Boot Camp

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<sup>7</sup> Despite the repeal of the Boot Camp program, Mont. Code Ann. §§ 53-30-401 to -403, Mont. Code Ann. § 46-18-203(7)(b) has never included a specific reference to Boot Camp like it does home arrest.

program in *Campbell v. Mahoney*, 2001 MT 146, ¶¶ 3-5, 306 Mont. 45, 29 P.3d 1034. The program was voluntary and subject to a defendant's acceptance by DOC. *Id.*; *see also* Mont. Code Ann. § 53-30-403(4)(a) (2009) (the same was true at the time Finley attended). Sentencing courts could not impose Boot Camp as a condition because acceptance was at DOC's discretion. *Id.* If an offender was accepted by DOC, the offender had to agree to various terms to ensure they understood the principles of the program. *Campbell*, ¶ 5 (citing Mont. Code Ann. § 53-30-403(3)(c) (1993)); *see also* Mont. Code Ann. § 53-30-403(3)(c) (2009). Voluntariness was integral, and if the offender did not agree to the terms, they would not be admitted to the program. *See id.*

Here, the district court recommended Finley attend the Boot Camp program, but it was Finley's choice to participate. His participation was voluntary because the program demanded it. *See Campbell*, ¶¶ 3-5; Mont. Code Ann. § 53-30-403(4)(a) (2009). It was not a condition of his sentence to attend Boot Camp, as it would have been if the district court had ordered him to spend a period of time in jail as a condition of his sentence. That would be the "time served in a detention center" referenced in Mont. Code Ann. § 46-18-203(7)(b). It is not the time Finley voluntarily spent at Boot Camp during the first deferral period of his sentence in DC 09-119. *See id.*

Although this Court’s reasoning in *Campbell*, is distinguishable because it addresses good time credit, it illustrates Finley’s argument is inconsistent with the purposes of the Boot Camp program and the meaning of a detention center under Mont. Code Ann. § 46-18-203(7)(b). As this Court explained in *Campbell*, ¶ 4, DOC had rulemaking authority for the Boot Camp program. Those rules included the omission of good time credit because it “would conflict with the program’s emphasis on positive achievement, earned rewards and the possibility of sentence reductions for successful completion.” *Id.* The prohibition “was also designed to weed out unmotivated applicants by providing a consequence for failing to complete the program.” *Id.* Interpreting “detention center” to include Finley’s time in Boot Camp would be in contradiction of this purpose, in addition to the plain language of the statutory scheme. *See* Mont. Code Ann. § 46-18-203(7)(b).

Finley has failed to show he is entitled to credit for the time he spent in Boot Camp because it conflicts with the plain language of the statute, which is the only authority he provides. This Court should not grant him that relief.

### **CONCLUSION**

The State concedes, pursuant to Mont. Code Ann. § 46-18-203(7)(b), that the district court erred in reducing Finley’s sentence for 161 days of incarceration and two years of elapsed time. This Court should remand this case to the district

court to replace those days with a sentence reduction of 1,293 days for elapsed time and 431 days for incarceration prior to trial and sentencing and pending revocation proceedings, for a total of 1,724 days.

The State respectfully requests this Court affirm the district court's denial of credit as to the 91 days Finley spent in Boot Camp during the first period that his sentence in DC 09-119 was deferred.

Respectfully submitted this 12th day of April, 2022.

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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 7,333 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

*/s/ Brad Fjeldheim*  
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## **CERTIFICATE OF SERVICE**

I, Brad Fjeldheim, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 04-12-2022:

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