

# APPENDIX

*State of Montana v. Kristi DiFulvio*—DA 22-0227

- Ex. 1: *Transcript of Proceedings—Change of Plea Hearing—06/17/20*
- Ex. 2: *Transcript of Proceedings—Sentencing Hearing—08/05/20*
- Ex. 3: *Appellant Kristi DiFulvio’s Motion to Withdraw Guilty Plea and Dismiss Charge Prior to Expiration of Deferred Sentence and accompanying Ex. A (Montana Department of Corrections Probation and Parole Division early release eligibility determination)—03/04/22*
- Ex. 4: *Appellee State of Montana’s Response to Petition for Early Termination of Deferred Sentence—4/5/22*
- Ex. 5: *Order—4/25/22*

# Exhibit 1

*Transcript of Proceedings—Change of Plea Hearing—06/17/20*



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EXHIBITS

NUMBER

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Exhibit 1

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1           THE COURT: All right. While we're waiting  
2 for Mr. Ellison, Mr. Whipple, we can take care of --  
3 is your client here today?

4           MR. WHIPPLE: Yes, she is.

5           THE COURT: We can, while we're waiting for  
6 them to bring the next two in custody. All right.  
7 This is Cause Number DC-19-187C, State of Montana  
8 versus Kristi Difulvio. That this is the time and  
9 place set for a change of plea hearing. Mr. Whipple,  
10 is that what we're doing?

11          MR. WHIPPLE: It is. May I approach?

12          THE COURT: You may.

13          MR. WHIPPLE: Handing the Court's what's  
14 marked as State's Exhibit 1, it's the plea agreement.  
15 I have no objection to its admission and then the  
16 acknowledgement.

17          THE COURT: Very well. We have State's  
18 Proposed Exhibit 1, the plea agreement letter, dated  
19 March 10, 2020, addressed to Mr. Whipple, signed by  
20 Mr. Kitzmiller. With no objection from Mr. Whipple,  
21 State's Proposed Exhibit 1 is admitted into the  
22 record as Exhibit 1.

23                   (Whereupon, Exhibit 1 was entered into  
24 evidence.)

25          THE COURT: All right. Ms. Difulvio, first

1 of all, do you understand today that you have no  
2 obligation to admit or plead guilty to anything? Do  
3 you understand that?

4 MS. DIFULVIO: Yes, sir.

5 THE COURT: All right. And probably,  
6 Ms. Difulvio, you're going to have to speak up a  
7 little bit because there's a recording, and then  
8 Ms. Rafferty the court reporter, has got to hear you.

9 MS. DIFULVIO: Okay.

10 THE COURT: So you got to speak up. So you  
11 understand, as far as I'm concerned, you have no  
12 obligation to admit or plead guilty to anything?

13 MS. DIFULVIO: Yes, Your Honor.

14 THE COURT: And you also understand that, I  
15 know that there have been negotiations in this case  
16 between Mr. Whipple and Mr. Kitzmiller, and that's  
17 how the plea agreement was reached, but do you  
18 understand, Ms. Difulvio, that I was not a party to  
19 the negotiations? This is the first time I've seen  
20 your deal. Do you understand that?

21 MS. DIFULVIO: Yes, Your Honor.

22 THE COURT: All right. I'm going to review  
23 the plea agreement for the record. It acknowledges  
24 that, in this case, Ms. Difulvio is charged with  
25 Count 1, criminal endangerment, a felony; and

1 Count 2, driving under the influence, first offense,  
2 a misdemeanor. That pursuant to the plea agreement,  
3 Ms. Difulvio has agreed to enter a guilty plea and  
4 provide a factual basis for the Court to accept her  
5 guilty plea to the offense of Count 1, criminal  
6 endangerment, a felony.

7 That upon Ms. Difulvio's entry and the  
8 Court's acceptance of her guilty plea, the parties,  
9 at the time of sentencing, the parties are going to  
10 recommend the following sentence to the Court. That  
11 the Court defer sentencing for a period of three  
12 years, upon the normal terms and conditions of the  
13 Court.

14 Including that Ms. Difulvio, during that  
15 term, shall not use alcohol or illegal drugs. That  
16 she shall be subject to random drug and alcohol  
17 testing. That she shall participate and complete a  
18 chemical dependancy evaluation and treatment if  
19 recommended by her supervising probation officer, and  
20 that she shall pay the court costs associated with  
21 the case, including the \$100 prosecution fee.

22 All right. That's the substance of the plea  
23 agreement, Ms. Difulvio. Do you have any questions  
24 about this plea agreement?

25 MS. DIFULVIO: No, Your Honor.

1           THE COURT: Now, Ms. Difulvio, you  
2 understand most importantly, it is a nonbinding plea  
3 agreement, which means, at the time of sentencing,  
4 after I've listened to the counsel's recommendations,  
5 ultimately I'm not bound to follow the plea  
6 agreement. I could impose a sentence more harsh or  
7 more lenient than that recommended by counsel, and if  
8 I were to do that, if I decide not to follow the plea  
9 agreement and I give you a sentence you're not happy  
10 with, that will not give you grounds to withdraw your  
11 guilty plea. Do you understand that?

12           MS. DIFULVIO: Yes, Your Honor.

13           THE COURT: All right. All that said,  
14 Ms. Difulvio, do you accept this plea agreement as  
15 your plea agreement in this case?

16           MS. DIFULVIO: Yes, Your Honor.

17           THE COURT: Very well. Now, Mr. Whipple has  
18 provided me with this additional document. It's  
19 captioned Defendant's Acknowledgement and Waiver of  
20 Rights By Plea of Guilty. And, Ms. Difulvio, for the  
21 record, did you sign this on June 2, 2020?

22           MS. DIFULVIO: Yes.

23           THE COURT: And you also initialed the  
24 paragraphs on both pages?

25           MS. DIFULVIO: Yes.

1 THE COURT: And, Ms. Difulvio, just to be  
2 for clear for the record, I know that you did, but  
3 you actually read the paragraphs before you initialed  
4 them?

5 MS. DIFULVIO: Yes.

6 THE COURT: So, Ms. Difulvio, you understand  
7 that this document is your written acknowledgement to  
8 the Court, filed in the court file, that you've been  
9 advised that all the rights listed here, these are  
10 all the rights you're giving up today if you enter  
11 your guilty plea?

12 MS. DIFULVIO: Yes.

13 THE COURT: Do you have any questions about  
14 these rights?

15 MS. DIFULVIO: No, Your Honor.

16 THE COURT: Do you understand most  
17 importantly you're giving up the right to have a  
18 trial in this case?

19 MS. DIFULVIO: Yes, Your Honor.

20 THE COURT: You also understand that once  
21 you plead guilty today here in the courtroom on the  
22 record, as that plea exists on the record, that's the  
23 strongest proof of your guilt known to the criminal  
24 law? Do you understand that, Ms. Difulvio?

25 MS. DIFULVIO: Yes, Your Honor.

1 THE COURT: And you've discussed the  
2 consequences of pleading guilty today with  
3 Mr. Whipple; is that correct?

4 MS. DIFULVIO: Correct.

5 THE COURT: And you discussed any possible  
6 defenses you would have on this case that you could  
7 rely on at trial, and whatever those defenses are,  
8 you've decided, instead of going to trial, you would  
9 rather accept the State's offer; is that correct?

10 MS. DIFULVIO: Correct.

11 THE COURT: Did you have any communication  
12 problems with Mr. Whipple?

13 MS. DIFULVIO: No, Your Honor.

14 THE COURT: Are you satisfied with his  
15 advice and services?

16 MS. DIFULVIO: Yes, Your Honor.

17 THE COURT: And you're prepared to change  
18 your plea; is that correct?

19 MS. DIFULVIO: Correct.

20 THE COURT: Very well. All right. Going  
21 back to the information that was filed in this case  
22 back on May 13, 2019, to Count 1 of the information,  
23 Ms. Difulvio, criminal endangerment, a felony, how do  
24 you plead?

25 MS. DIFULVIO: Guilty.

1 THE COURT: Now, Ms. Difulvio, before I can  
2 accept your guilty plea, I need to make sure there's  
3 a factual basis for that plea. Mr. Adams, the Clerk  
4 of Court, will place you under oath and then I need  
5 you to tell me what you did and why you think you're  
6 guilty of this charge. Do you understand that?

7 MS. DIFULVIO: I do.

8 THE COURT: Very well.

9 THE CLERK: Raise your right hand, please.  
10 Do you swear the testimony you're about to give shall  
11 be the truth, the whole truth, and nothing but the  
12 truth so help you God?

13 MS. DIFULVIO: I do.

14 THE CLERK: Could you state and spell your  
15 name for the record, please?

16 MS. DIFULVIO: Kristi Leigh Difulvio.  
17 K-R-I-S-T-I, L-E-I-G-H, D-I-F-U-L-V-I-O.

18 THE COURT: All right. Ms. Difulvio, can  
19 you tell me about this charge?

20 MS. DIFULVIO: On the 21st day of April 2019  
21 I knowingly engaged in conduct that created a  
22 substantial risk of death or serious bodily injury to  
23 another when I consumed an excessive amount of  
24 alcohol and drove the wrong way on the highway in  
25 Gallatin County, Montana.

1 THE COURT: All right. And so this action  
2 all occurred within the boundaries of Gallatin  
3 County?

4 MS. DIFULVIO: Correct.

5 THE COURT: Is that correct?

6 MS. DIFULVIO: Yes, Your Honor.

7 THE COURT: All right. And also you agree  
8 that, again, that you had consumed enough alcohol  
9 that your ability to safely operate your motor  
10 vehicle was impaired?

11 MS. DIFULVIO: Correct.

12 THE COURT: Ms. Murphy, State satisfied with  
13 that?

14 MS. MURPHY: Ms. Difulvio, were there other  
15 vehicles on the highway at the time? Other  
16 motorists?

17 MS. DIFULVIO: Yes.

18 MS. MURPHY: That's sufficient, Your Honor.

19 THE COURT: I'm sorry. I missed that,  
20 Ms. Difulvio. To drive the wrong way on the  
21 interstate, but also to endanger, there has to be  
22 other people to be endangered in that respect. So  
23 anyway, with that addition, for the record then,  
24 Ms. Murphy, State satisfied?

25 MS. MURPHY: Yes, Your Honor.

1           THE COURT: Mr. Whipple, you're satisfied  
2 with the allocution?

3           MR. WHIPPLE: I am.

4           THE COURT: All right. Ms. Difulvio, then  
5 just so we're clear for the record, you've now pled  
6 guilty to this charge, criminal endangerment, a  
7 felony, ma'am, because you agree, at the end of the  
8 day, there is no doubt you are guilty of this charge;  
9 is that correct?

10          MS. DIFULVIO: Correct, Your Honor.

11          THE COURT: Very well. Mr. Whipple, you've  
12 had a chance to discuss Ms. Difulvio's rights with  
13 her; is that correct?

14          MR. WHIPPLE: I have.

15          THE COURT: Did you have any communication  
16 problems with Ms. Difulvio?

17          MR. WHIPPLE: I have not.

18          THE COURT: Do you believe she understands  
19 the Constitutional rights she's waiving today by  
20 entering her guilty plea?

21          MR. WHIPPLE: I do.

22          THE COURT: And do you believe she makes her  
23 waiver knowingly and voluntarily?

24          MR. WHIPPLE: Yes. And with that also, Your  
25 Honor, I did not specifically discuss with her any

1 lesser included offense of negligent endangerment  
2 because the Supreme Court has indicated at the time  
3 that negligent endangerment is not a lesser of  
4 criminal endangerment. I know that could change, but  
5 as of right now, I believe that's the law, unless  
6 Ms. Murphy disagrees.

7 THE COURT: But as of right now, the way the  
8 wind's blowing today, right, Mr. Whipple?

9 MR. WHIPPLE: Exactly, Your Honor.

10 THE COURT: So the Court will order that a  
11 Pre-Sentence Investigation Report be prepared, and  
12 Ms. Difulvio is not in custody. Given that this is  
13 probably just going to be a regular sentencing,  
14 Mr. Whipple, we could go to Wednesday, August 5th?

15 MR. WHIPPLE: That's fine, Your Honor.

16 THE COURT: Ms. Murphy, does that work for  
17 the State?

18 MS. MURPHY: Yes, Your Honor, thank you.

19 THE COURT: All right. Ms. Difulvio, we'll  
20 go 8:30 a.m. on Wednesday, August 5th for sentencing,  
21 okay?

22 MS. DIFULVIO: Okay.

23 THE COURT: All right. And, Ms. Murphy,  
24 State have a motion?

25 MS. MURPHY: Yes, Your Honor. The State

1 would move to dismiss Count 2 of the information.

2 THE COURT: Mr. Whipple, you have any  
3 objection to that?

4 MR. WHIPPLE: No objection.

5 THE COURT: Count 2 is dismissed and,  
6 Ms. Murphy, could you get Maureen or someone to get  
7 me an order? You got one?

8 MS. MURPHY: Yes. May I approach?

9 THE COURT: Thank you. Thank you,  
10 Ms. Murphy. For the record, the Court is signing the  
11 order dismissing Count 2 of the information, as per  
12 the parties plea agreement. All right. Ms. Murphy,  
13 State have anything further for Ms. Difulvio?

14 MS. MURPHY: I do not, Your Honor.

15 THE COURT: And, Mr. Whipple?

16 MR. WHIPPLE: Nothing further, thank you.

17 THE COURT: You may be excused,  
18 Ms. Difulvio.

19 (WHEREUPON, THE Proceedings concluded.)  
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2 REPORTER'S CERTIFICATE

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4

5 I, Debbie Rafferty, an Official Stenographic  
6 Reporter, located in the City of Bozeman, State of  
7 Montana, hereby certify:

8 That prior to being examined, the witnesses  
9 named in the foregoing proceeding were sworn to  
10 testify to the truth, the whole truth, and nothing  
11 but the truth;

12 That the said proceeding was recorded on an  
13 Stenographic machine and FTR system within the  
14 courthouse and was thereafter reduced to typewriting  
15 by computer-aided transcription under my direction.

16 I further certify that I am not in any way  
17 interested in the outcome of this action and that I  
18 am not related to any of the parties thereto.

19 Witness my hand this [!SIG DAY] day of  
20 [!MONTH], 2022.

21

22 /s/ Debbie Rafferty

23 Debbie Rafferty  
24 Official Court Reporter

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# Exhibit 2

*Transcript of Proceedings—Sentencing Hearing—08/05/20*

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MONTANA EIGHTEENTH JUDICIAL DISTRICT  
COUNTY OF GALLATIN  
\* \* \* \* \*

STATE OF MONTANA, )  
)  
)  
PLAINTIFF, )  
)  
VS. ) CAUSE NO. DC-19-187C  
)  
KRISTI DIFULVIO, )  
)  
DEFENDANT. )

TRANSCRIPT OF PROCEEDINGS  
Sentencing Hearing

Before the Honorable John Brown, Judge Presiding

Date and time: Wednesday, August 5, 2020  
10:30 a.m.

Place: Law and Justice  
Center  
615 South 16th Avenue  
Bozeman, MT 59715

DEBBIE RAFFERTY  
Official Reporter, Eighteenth Judicial District  
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(406) 582-2154

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1 THE COURT: This is DC-19-187C, State of  
2 Montana versus Kristi Difulvio. Let the record show  
3 that Ms. Difulvio is here with counsel Mr. Whipple.  
4 Mr. Bowen is here on behalf of the State.  
5 Mr. Whipple, we have this set as a sentencing hearing  
6 today. Is that what we're doing?

7 MR WHIPPLE: Yes, Your Honor.

8 THE COURT: Very well. So she appears with  
9 Mr. Whipple. Mr. Bowen is here on behalf of the  
10 State. Before we talk about the PSI, Mr. Bowen, do  
11 you have a sentencing order?

12 MR. BOWEN: I do, if I may I approach.

13 THE COURT: You may. Thank you, Mr. Bowen.  
14 All right. To start with, Mr. Whipple, we have a  
15 Pre-Sentence Investigation Report that was filed with  
16 the Court on July 8, 2020. That PSI was prepared,  
17 written by Erica Schell, a probation officer here in  
18 Bozeman. Did you and Ms. Difulvio receive a copy of  
19 that?

20 MR. WHIPPLE: We have.

21 THE COURT: And does Ms. Difulvio wish to  
22 request any changes or corrections in the PSI?

23 MR. WHIPPLE: No, Your Honor.

24 THE COURT: Very well. Then, Mr. Bowen,  
25 does the State have any testimony today regarding

1 sentencing?

2 MR. BOWEN: No, Your Honor.

3 THE COURT: Mr. Whipple, do you have any  
4 testimony today?

5 MR. WHIPPLE: No, Your Honor.

6 THE COURT: Mr. Bowen, what's State's  
7 recommendation?

8 MR. BOWEN: Your Honor, the State's  
9 recommendation is set forth in the plea agreement  
10 letter dated March 10, 2020. It's a joint  
11 recommendation between the State and the Defendant,  
12 agreeing to recommend to the Court that the Court  
13 defer sentencing in this case for a period of three  
14 years upon the normal terms and conditions of the  
15 Court and Probation.

16 And including the requirement that the  
17 Defendant not use alcohol or illegal drugs and shall  
18 be subject to random drug and alcohol testing. Shall  
19 participate and complete chemical dependency  
20 evaluation and treatment if recommended by her  
21 supervising officer, and shall pay the Court costs  
22 associated with this case.

23 That recommendation was predicated on a  
24 Pre-Sentence investigation indicating she was  
25 eligible for that deferred imposition of sentence.

1 The Defendant appears to only have one conviction,  
2 and that's for speeding from 2018.

3 The State believes that the plea agreement  
4 proposed between the parties meets the sentencing and  
5 correctional policies of the State of Montana, and  
6 takes into consideration Ms. Difulvio's lack of  
7 criminal history and the facts and circumstances of  
8 this case, which include that the Defendant was  
9 driving the wrong way on the interstate while under  
10 the influence of alcohol.

11 It's obviously, I think in some ways, a  
12 significant benefit to her because if she completes  
13 the three-year deferred on a felony, she will  
14 continue to have, essentially, no criminal history,  
15 but it will provide three years of supervision -- or  
16 up to three years of supervision. She also received  
17 the benefit, I think, of Count 2 being dismissed,  
18 which would otherwise be the stackable driving under  
19 the influence offense.

20 THE COURT: All right. Thank you,  
21 Mr. Bowen. Mr. Whipple?

22 MR. WHIPPLE: Thank you, Your Honor. The  
23 only thing I would really add to Mr. Bowen's  
24 recommendation is to point out that, you know, this  
25 incident occurred in April of 2019. There have been

1 no violations by Ms. Difulvio. In addition to that,  
2 she voluntarily went to two treatment programs. She  
3 went to The Ranch, and I think that was in  
4 Pennsylvania, but that was a 30-day program. And  
5 then she followed that up with about three months in  
6 Sunset Recovery in California.

7 She did that of her own volition without  
8 being forced. I think with her performance on her  
9 conditions of release, as well as her decision to  
10 voluntarily seek treatment that was so needed. I  
11 think the Court should adopt the plea agreement,  
12 taking those factors into consideration, as well what  
13 Mr. Bowen has spoken about. Thank you.

14 THE COURT: Thank you, Mr. Whipple. Does  
15 Ms. Difulvio wish to say anything?

16 MR. WHIPPLE: No, Your Honor.

17 THE COURT: All right.

18 Under Montana law, the Court is required to  
19 state the reasons for the sentence the Court will  
20 impose in this case. Montana's correctional policy  
21 requires the Court to consider punishment  
22 commensurate with the nature and degree of harm  
23 caused by Ms. Difulvio's offense. The Court is  
24 further required to consider sentences that will  
25 protect the public safety by incarcerating serious,

1 repeat felony offenders or violent felony offenders;  
2 sentences that will provide for restitution and  
3 reparation to victims and sentences that will provide  
4 offenders with opportunities to engage in  
5 self-improvement and rehabilitation when that is  
6 appropriate.

7           After considering the information contained  
8 in the Pre-Sentence Investigation Report, the  
9 information in the Court file, and the information  
10 presented at today's hearing, the Court states the  
11 following reasons for its sentence.

12           Ms. Difulvio is 29-years old. In this case,  
13 she has pled guilty to one count of felony criminal  
14 endangerment. The specific facts of her offense are,  
15 is that while she was under the influence of alcohol,  
16 that Ms. Difulvio drove on the wrong side, the wrong  
17 lane, on the interstate causing -- placing other  
18 motorists in danger. So she drove, actually, in the  
19 wrong direction on I-90, and that's the basic fact of  
20 this.

21           Ms. Difulvio was cooperative, according to  
22 Ms. Schell. She was cooperative during the  
23 preparation of the Pre-Sentence Investigation Report.  
24 She provided useful information for Ms. Schell  
25 regarding chemical dependency issues. I should also

1 state that Ms. Difulvio, just for family information,  
2 that Ms. Difulvio is single; she has no dependent  
3 children. At the time the PSI was filed, she was  
4 employed, at least part time, at Thai Basil.

5 That for chemical dependency issues, that  
6 Ms. Difulvio was forthright, that she admitted that  
7 she does have an issue with alcohol. She described  
8 herself as a recovering alcoholic. She's 29, she  
9 started drinking regularly when she was 18, and as  
10 many people are, that she has continued to use  
11 alcohol and it developed into a problem, a dependency  
12 issue. And I understand and acknowledge the  
13 information provided by Mr. Whipple, that since this  
14 charge was filed, that, on her own, that Ms. Difulvio  
15 has attended two different inpatient treatment  
16 programs.

17 So I appreciate that. There are no chemical  
18 dependency issues. There's no issues regarding  
19 illegal drug use. That she has been totally  
20 compliant with the Court's conditional release order,  
21 that we have not had any alleged bail violations,  
22 specifically any alcohol use violations, which would  
23 be of great concern to the Court given the serious  
24 nature of this charge.

25 Based upon those facts, based also upon the

1 fact that Ms. Difulvio has no prior felony  
2 convictions, she's eligible for a deferred sentence.  
3 The Court is going to follow the plea agreement and  
4 impose the sentence negotiated by the parties and  
5 recommended by the parties. I'm doing that because I  
6 believe that that sentence does satisfy the  
7 sentencing guidelines for the State of Montana.

8 First of all, for punishment wise, a  
9 three-year deferred sentence, even if Ms. Difulvio is  
10 in total compliance with that sentence, she could be  
11 eligible for early termination of that sentence after  
12 18 months, but whether it's terminated early or not,  
13 being it 18 or the full 36 months of supervision by  
14 Probation, that is a significant loss of personal  
15 freedom, and I think, given the facts of this case,  
16 that that is a sufficient punishment in this matter.

17 Under the second sentencing guideline, as  
18 stated, Ms. Difulvio has no prior felony convictions  
19 so that guideline does not apply and it makes her  
20 eligible for the deferred sentence.

21 Under the third sentencing guideline, there  
22 is no issue of restitution.

23 Under the fourth sentencing guideline,  
24 Ms. Difulvio, you've taken great steps on your own  
25 for rehabilitation, because you went to inpatient

1 treatment, that you recognize you have a problem with  
2 alcohol. I appreciate that fact, and I think that  
3 this sentence will satisfy. It's appropriate for the  
4 Court to give you a chance to continue your own  
5 rehabilitation that you've started on your own. The  
6 Court can do that by placing you under the  
7 supervision of the State, you'll have a probation  
8 officer.

9           You don't have to be, you know, best buddies  
10 with your probation officer, but I think that you can  
11 find your probation officer to actually be helpful  
12 for you because they have access to certain resources  
13 and information you may not be aware of. That  
14 supervision, I tell people all the time, you know, if  
15 you make it easy for probation to supervise you, your  
16 supervision will be easier.

17           And it's human nature, you know, your  
18 probation officer will look down their list each day  
19 and who they have to talk to. It's just like when I  
20 go to Court, I look at my calendar, and I can tell by  
21 looking at the cases, it's, like, easy, easy, easy,  
22 hard, easy. You want to be an easy person on the  
23 probation officer's list. And if you build up, you  
24 know, people actually do become friends, kind of  
25 friends with their probation officers, but they're a

1 resource for you.

2           You've done all this on your own. You're  
3 not drinking, you've gone to treatment, and you can  
4 use your supervision to bolster your sobriety and  
5 stay in recovery to do that. This sentence will  
6 assist you on staying on that path. Those are the  
7 reasons for the sentence the Court's going to impose.

8           Ms. Difulvio, would you please rise?

9 Ms. Difulvio, is there any legal reason why the Court  
10 should not impose its sentence at this time?

11           MR. WHIPPLE: No, Your Honor.

12           THE COURT: Very well. Ms. Difulvio, then  
13 on today's date, August 5, 2020, that the Court  
14 sentences you as follows:

15           For Count 1, criminal endangerment, a  
16 felony, the imposition of sentence is deferred for a  
17 period of three years on the following conditions:

18           Ms. Difulvio shall pay all financial  
19 obligations as required by this sentencing order.  
20 That during the three-year term of deferment, she  
21 will be placed under the supervision of the Montana  
22 Department of Corrections Probation and Parole  
23 Bureau. She shall sign a probation agreement and she  
24 shall abide by the terms and conditions of that  
25 agreement.

1           That she shall be subject to any level of  
2 supervision, including the Intensive Supervision  
3 Program or Treatment Court, as deemed appropriate by  
4 her supervising officer. She shall pay the monthly  
5 supervision fee to the Montana Department of  
6 Corrections. That immediately upon conclusion of  
7 Court, Ms. Difulvio shall report to Probation and  
8 Parole with her copy of the sentencing order so they  
9 may sign her up and begin supervision.

10           Further, as terms of this sentence, that  
11 Ms. Difulvio shall not use or possess alcohol or  
12 illegal drugs, unless prescribed by a licensed  
13 physician, nor shall she enter or seek employment at  
14 any establishment where alcohol is the chief item of  
15 sale. That Ms. Difulvio shall not enter any casinos.

16           Ms. Difulvio's person, residence, and  
17 vehicle shall be subject to warrantless searches at  
18 any time, day or night, by a probation officer, ISP  
19 officer or other lawful authority acting under the  
20 direction of a probation or ISP officer, to assess  
21 her compliance with the rules of probation. If she  
22 resides with other persons, all places in her  
23 residence where she has access will be subject to  
24 search, even those private rooms of other persons  
25 with whom she resides, unless those rooms are locked

1 and she does not have access to those rooms.

2           That Ms. Difulvio shall submit to the  
3 testing of her breath and bodily fluids, upon the  
4 reasonable request of her supervising officer, to  
5 detect the presence of alcohol or illegal drugs. If  
6 requested by her supervising officer, she shall  
7 obtain a chemical dependency evaluation at her own  
8 expense and shall follow all recommendations of that  
9 evaluation. She shall participate in any counseling  
10 or treatment deemed appropriate by her supervising  
11 officer.

12           That she shall not own, possess, or be in  
13 control of any firearms or deadly weapons as defined  
14 by state and federal law, including black powder or  
15 chemical agents such as O.C. spray. Ms. Difulvio  
16 shall obey all state, federal and local laws. She  
17 shall undergo chemical dependency treatment if a  
18 licensed counselor recommends treatment. She shall  
19 enter and remain in an aftercare treatment program  
20 for the entirety of the probationary period. She  
21 shall submit to random or routine drug or alcohol  
22 testing. She shall not obtain a medical marijuana  
23 card, nor shall she become a medical marijuana  
24 caretaker or provider.

25           Her financial obligations under this order

1 are as follows: She shall pay the \$20 administrative  
2 fee for a felony; the \$50 victim witness fee; the \$10  
3 user surcharge; the \$100 prosecution fee for a  
4 felony, for a total financial obligation of \$180.

5 She shall pay that amount, \$180, to the clerk of the  
6 Montana 18th Judicial District Court and,

7 Mr. Whipple, does Ms. Difulvio have a proposal as to  
8 when she could pay that?

9 MR. WHIPPLE: Just paid in full within 30  
10 days, Your Honor.

11 THE COURT: All right. That Ms. Difulvio  
12 shall pay that amount, \$180, on or before, we'll say  
13 -- how about we'll say September 8, 2020.

14 Ms. Difulvio shall receive credit for one day  
15 previously served.

16 Mr. Bowen, given the Court's intent to  
17 follow the parties plea agreement, from the State's  
18 point of view, have I left anything out of the  
19 sentencing order?

20 MR. BOWEN: No, Judge.

21 THE COURT: Mr. Whipple?

22 MR. WHIPPLE: Nothing, Your Honor, thank  
23 you.

24 THE COURT: All right. Bond, if any, posted  
25 by or on behalf of Ms. Difulvio is hereby exonerated

1 and shall be released. The Court signs the  
2 sentencing order today's date, August 5, 2020. All  
3 right. Ms. Difulvio, you may be seated here for a  
4 minute. We'll get you a copy of this order.

5 All right. Mr. Bowen, State have anything  
6 further for Ms. Difulvio today?

7 MR. BOWEN: No, Your Honor, thank you.

8 THE COURT: Mr. Whipple?

9 MR. WHIPPLE: Nothing further, thank you.

10 THE COURT: Mr. Whipple, here's a copy of  
11 the sentencing order for Ms. Difulvio. Ms. Difulvio,  
12 you may be excused. Good luck to you.

13 (Whereupon, the Proceedings concluded.)

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2 REPORTER'S CERTIFICATE

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5 I, Debbie Rafferty, an Official Stenographic  
6 Reporter, located in the City of Bozeman, State of  
7 Montana, hereby certify:

8 That prior to being examined, the witnesses  
9 named in the foregoing proceeding were sworn to  
10 testify to the truth, the whole truth, and nothing  
11 but the truth;

12 That the said proceeding was recorded on an  
13 Stenographic machine and FTR system within the  
14 courthouse and was thereafter reduced to typewriting  
15 by computer-aided transcription under my direction.

16 I further certify that I am not in any way  
17 interested in the outcome of this action and that I  
18 am not related to any of the parties thereto.

19 Witness my hand this 5th day of August,  
20 2020.

21

22 /s/ Debbie Rafferty

23 Debbie Rafferty  
24 Official Court Reporter

25

# Exhibit 3

Appellant Kristi DiFulvio's *Motion to Withdraw Guilty Plea and Dismiss Charge Prior to Expiration of Deferred Sentence* and accompanying Ex. A  
(Montana Department of Corrections Probation and Parole  
Division early release eligibility determination)—03/04/22



1 Respectfully submitted this the 4th day of March 2022.

2 Kristi DiFulvio

3 Kristi DiFulvio

4 Defendant

CERTIFICATE OF SERVICE

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I, Kristi DiFulvio, hereby certify that on March 4, 2022, I served a correct and accurate copy of the foregoing document on counsel of record, by \_\_\_\_\_ hand delivery  
 mail postage prepaid addressed as follows:

Marty Lambert, County Attorney  
Gallatin County Attorney's Office  
1709 West College Street Suite 200  
Bozeman, MT 59715  
406.582.3745

Kristi DiFulvio  
Defendant's Name



**MONTANA DEPARTMENT OF CORRECTIONS  
PROBATION AND PAROLE DIVISION**

**PROBATIONER ELIGIBLE FOR EARLY TERMINATION  
OF DEFERRED SENTENCE**

GALLATIN COUNTY CLERK  
DISTRICT COURT  
SOUTH WING

2022 MAR -8 AM 9:15

FILED MP

REPORT TO:	Gallatin County District Court	DATE:	March 04, 2022
JUDICIAL DISTRICT:	Eighteenth Judicial District, Gallatin County	BY:	DEPUTY
NAME:	DIFULVIO, Kristi	DOC ID #:	3029065
DATE OF SENTENCE:	August 05, 2020	EXPIRATION DATE:	August 05, 2023
DOCKET #:	DC-2019-187C	STATUS:	Probation
CRIME:	Criminal Endangerment (F)		
SENTENCE:	Three (3) Years Deferred		
PRESENT ADDRESS:	219 East Callender Street Livingston, MT 59047		

**LEGAL HISTORY**

On August 05, 2020, the Defendant appeared before the Honorable Judge John Brown, Montana Eighteenth Judicial District, Gallatin County, Montana, for Sentencing in DC-2019-187C, Count I: Criminal Endangerment. The Defendant was sentenced to Three (3) Years Deferred.

On August 05, 2020, the Defendant was signed to the rules of her probation, as witnessed by Probation & Parole Officer Ashley Spragg.

**PROGRESS AND CONDUCT**

Kristi DiFulvio, the Defendant is a Low Risk Offender and has successfully completed One (1) Year Seven (7) Months under Supervision in DC-2019-187C. The Defendant is currently compliant with Probation & Parole Supervision. The Defendant has received no formal revocations while serving this sentence. On August 13, 2021, the Defendant was approved by Probation & Parole to operate a motor vehicle. The Defendant has provided all negative Urine Analysis Tests for drugs and alcohol. The Defendant's Court Costs/Fines have been Paid in Full. The Defendant has paid the Pre-Sentence Investigation (PSI) Fee. The Defendant is current on Supervision Fees.

**STATUTORY REQUIREMENTS**

Probation & Parole Officer Shiloh  
Barrett

represents that:

Imposition of sentence of Probationer Kristi DiFulvio DOC#3029065 was DEFERRED  
for 3 years, and Probationer

- a)  has successfully served 2 years or 1/2 of time deferred, whichever is less; and
- b)  has demonstrated compliance with supervision requirements.
- c)  All restitution and court-ordered financial obligations have been paid in full.
- d)  Probationer has been advised he/she can seek dismissal of underlying charge pursuant to §46-18-204, MCA.
- e) Victim Information is as follows:
  - No Registered Victim(s)
  - Yes, Registered Victim(s)
    - No input received
    - Oral and/or Written input forwarded to county attorney serving in the county of the presiding district court
- f)  Attachment(s):

All requirements of §46-18-208(1), MCA, have been met.

Respectfully submitted:

Shiloh Barrett



Probation & Parole Officer/IC Agent

Probation & Parole Officer/IC Agent Signature

414 East Callender Street Livingston, MT 59047

406.222.4164

Address:

Telephone #:

cc: Offender Record

# Exhibit 4

Appellee State of Montana's *Response to Petition for Early Termination of Deferred Sentence*—4/5/22

Eric N. Kitzmiller, Chief Deputy County Attorney  
Gallatin County Attorney's Office  
1709 West College Street  
Bozeman, Montana 59715  
(406) 582-3745

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

\* \* \* \* \*

STATE OF MONTANA,	)	Case No.: DC-19-187C
	)	
Plaintiff,	)	<u>STATE'S RESPONSE TO PETITION</u>
	)	<u>FOR EARLY TERMINATION OF</u>
vs.	)	<u>DEFERRED SENTENCE</u>
	)	
KRISTI DIFULVIO,	)	
	)	
Defendant.	)	

---

Comes now the State of Montana by Eric N. Kitzmiller, Chief Deputy Gallatin County Attorney, and makes this response in opposition to the defendant's petition for early termination of deferred sentence.

On August 5, 2020, the defendant, Kristi Difulvio, received a three (3) year deferred imposition of sentence for committing the offense of Criminal Endangerment, a felony. The circumstances surrounding the offense proved the defendant was driving a motor vehicle the wrong way on Interstate 90 while under the influence of alcohol. Two motorists who were traveling in the correct direction on the Interstate were concerned for their safety and had to take action to avoid a collision with the vehicle driven by the defendant.

A plea agreement was entered in this case in which the State and the defendant agreed to recommend a deferred sentence for a

period of three (3) years. The State also agreed to dismiss a misdemeanor driving under the influence offense associated with this case.

The defendant's deferred imposition of sentence will expire on August 5, 2023.

The State appreciates and respects the fact that the defendant has been doing well and is taking advantage of the benefit she received from the plea agreement and deferred imposition of sentence. The defendant agreed to be on probation for three (3) years, and the court deferred sentencing for a period of three (3) years. Supervision of the defendant appears to be working. The defendant should fulfill the commitment she made to the people of Montana to be on probation for three (3) years. Therefore, the State requests that the defendant's petition be denied.

Respectfully submitted this 5th day of April, 2022.

~~ERIC N. KITZMILLER~~  
~~DEPUTY COUNTY ATTORNEY~~  
Eric N. Kitzmiller  
Chief Deputy County Attorney  
Gallatin County, Montana

CERTIFICATE OF SERVICE

I hereby certify that on the 5<sup>th</sup> day of April, 2022, I served the foregoing State's Response to petition for early termination of deferred sentence by causing a true copy thereof to be delivered to the following:

Kristi DiFulvio  
219 East Callendar Street  
Livingston, Montana 59047

Shiloh Barrett, Probation/Parole Officer  
414 East Callendar Street  
Livingston, Montana 59047

**ERIC N. KITZMILLER  
DEPUTY COUNTY ATTORNEY**

Eric N. Kitzmiller  
Chief Deputy County Attorney  
Gallatin County Attorney's Office  
1709 West College Street  
Bozeman, Montana 59715  
(406) 582-3745

# Exhibit 5

Order—4/25/22

2022 APR 25 PM 3:02

FILED

MP  
BY \_\_\_\_\_ DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

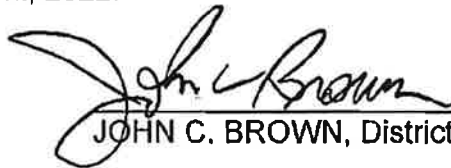
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STATE OF MONTANA,	)	Cause No. DC-19-187C
	)	
Plaintiff,	)	<b>ORDER</b>
v.	)	
	)	
KRISTI DIFULVIO,	)	
	)	
Defendant.	)	
_____	)	

On March 8, 2022, Defendant Kristi DiFulvio filed a *pro se* Motion to Withdraw Guilty Plea and Dismiss Charge Prior to Expiration of Deferred Sentence. On April 5, 2022, the State filed their Response to Petition for Early Termination of Deferred Sentence.

IT IS HEREBY ORDERED that the Defendant's Motion is hereby DENIED for the reasons set forth in the State's Response.

Dated this 25 day of April, 2022.

  
\_\_\_\_\_  
JOHN C. BROWN, District Judge

cc: Eric Kitzmiller  
Kristi DiFulvio  
Probation and Parole

} emailed  
4/26/22

## **CERTIFICATE OF SERVICE**

I, Kevin S. Brown, hereby certify that I have served true and accurate copies of the foregoing  
Other - Other to the following on 06-16-2022:

Austin Miles Knudsen (Govt Attorney)  
215 N. Sanders  
Helena MT 59620  
Representing: State of Montana  
Service Method: eService

Eric N. Kitzmiller (Attorney)  
1709 W. College, Suite 200  
Bozeman MT 59715  
Representing: State of Montana  
Service Method: Conventional

Electronically Signed By: Kevin S. Brown  
Dated: 06-16-2022