IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0256

STATE OF MONTANA,

Plaintiff and Appellee,

v.

LEA ALEX YATES II,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable Mary Jane Knisely, Presiding

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STATEMENT OF ISSUE

Did the State breach the plea agreement when it indicated to the court that a deferred imposition of sentence would be a "gift" to the Appellant but immediately requested the court to defer Appellant's imposition of sentence?

STATEMENT OF THE CASE

On February 25, 2019, the State filed an Information charging Appellant Lea Alex Yates II (Yates) with Assault on a Minor, a felony, in violation of Mont. Code Ann. §§ 45-5-212(1) and (2)(b). (D.C. Doc. 4.) The parties eventually entered into a non-binding plea agreement pursuant to Mont. Code Ann. § 46-12-211(1)(c). (D.C. Doc. 27, attached to Appellant's Brief as Appendix B [Appellant's App. B].) Pursuant to the plea agreement, Yates agreed to plead guilty to Assault on a Minor. (Appellant's App. B at 1.) In exchange, the State agreed to jointly recommend a sentence for a four-year deferred imposition of sentence, with a $1,000.00 fine and suitable treatment conditions. (*Id.*) The plea agreement reflected that the district court was not bound by the joint recommendation. (*Id.*)

The district court, the Honorable Jessica Fehr presiding, accepted Yates's guilty plea at a change of plea hearing. (11/24/20 Change of Plea Hearing Transcript [COP Hr'g Tr.] at 9; D.C. Doc. 26.) The district court, the Honorable Mary Jane Knisely presiding, held a sentencing hearing on

March 1, 2021. (3/1/21 Sentencing Hearing Transcript [Sent. Hr'g Tr. and D.C. Doc. 34, attached to Appellant's Brief as Appendix A [Appellant's App. A].) The court did not sentence Yates in accordance with the parties' joint recommendation for a four-year deferred imposition of sentence. (Sent. Hr'g Tr. at 6-7; Appellant's App. B.) Instead, the court imposed the following sentence: Count I, felony Assault on a Minor, three years to the Montana Department of Corrections (DOC), all time suspended, with a recommendation for Yates to be placed on DOC's mental health caseload. (Sent. Hr'g Tr. at 7-8; Appellant's App. B.) The court also imposed numerous conditions as part of its sentence, including a requirement that Yates obtain a mental health examination. (Sent. Hr'g Tr. at 8-9; Appellant's App. B.)

Defense counsel objected to the court's rejection of the joint sentence recommendation, to the imposed sentence, and to the prosecutor's comments regarding the plea agreement. (Sent. Hr'g Tr. at 10-11.) The court noted Yates's objections, explained its reasoning, and concluded the hearing. (*Id.* at 12.)

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STATEMENT OF FACTS

I. Circumstances of the offense[1]

On February 20, 2019, Yellowstone County Sheriff's Office (YCSO) Deputy Etters (Deputy Etters) was dispatched to the residence of the victim's maternal grandmother. (D.C. Doc. 1 at 1.) C.D. (Mother) told Deputy Etters that she had been dating Yates for approximately two months and they had recently moved into his grandmother's house along with her two children, L.D., born April 2016, and D.L., born April 2017. (*Id.*) Mother left the two children in Yates's care for approximately four hours on the previous day while she was at work. (*Id.* at 2.) When Mother returned home, Yates told her he had spanked L.D. because L.D. had urinated on herself. (*Id.*) Mother observed bruising on L.D.'s buttocks that evening while she was giving L.D. a bath. (*Id.*) Mother told Deputy Etters that she had confronted Yates about the bruising, but Yates refused to answer her questions. (*Id.*)

The next day, Mother took the children to the home of her mother, Geanna Humphrey (Grandmother), so Grandmother could watch the children while Mother worked. (D.C. Doc. 1 at 2.) Grandmother noticed the bruising on L.D.'s

[1] Because Yates pled guilty to the charge, the facts underlying and supporting Yates's guilty plea are set forth in the State's "Motion for Leave to File Information with Supporting Affidavit." (D.C. Doc. 1.)

buttocks when she helped L.D. in the bathroom and reported the bruising to Child Protective Services. (*Id.*)

Mother showed Deputy Etters the bruising on L.D.'s body. (*Id.*) Deputy Etters "observed bruising [that] covered a significant portion of the (sic) L.D.'s buttocks and appeared to be the result of extreme force." (*Id.*) Mother also took pictures of the bruising and provided them to Deputy Etters. (*Id.*)

Deputy Etters and another YCSO officer went to Yates's residence and "explained the reason for the contact [with him]." (*Id.*) Yates began to cry and agreed to give a statement after the officers advised him of his rights. (*Id.*) Yates initially claimed that when he was watching the children, "L.D. urinated on herself and rubbed the urine on the couch." (*Id.*) Yates first claimed to have used a timeout as punishment and denied using any physical punishment. (*Id.*) After Deputy Etters confronted Yates about the bruising, Yates admitted that he "spanked L.D. one time with his hand." (*Id.*) Deputy Etters reported that the amount of bruising on L.D. was "inconsistent with a single spanking . . . . [because it] cover[ed] the entire buttocks and also extend[ed] upward onto the lower quarter of L.D.'s back and is far wider in scope than a single hand on both the buttocks and lower back." (*Id.*)

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II. Change of plea hearing

The district court, the Honorable Judge Jessica Fehr presiding, began the change of plea hearing by asking Yates if he was comfortable proceeding given that she was not the judge assigned to his case. (COP Hr'g Tr. at 2-3.) Yates responded, "Yes, ma'am." (*Id.* at 3.) The court next advised Yates that he was charged with felony Assault on a Minor, which carried a maximum penalty of 5 years in prison and/or a $50,000 fine. (COP Hr'g Tr. at 3.) Yates indicated he understood the maximum penalty the court could impose. (*Id.*) The court recognized it was Yates's intention to plead guilty that day and was aware that the parties had a plea agreement with a sentencing recommendation. (*Id.*) The court first advised Yates of his rights. (*Id.*) The district court next addressed the plea agreement:

> [THE COURT]: Okay. So, the plea agreement that I have Mr. Yates, on the last page, over your typewritten name, is a signature. Is that your signature?
>
> [DEFENDANT]: Yes, ma'am, it is.
>
> [THE COURT]: Before you signed this agreement, did you have an opportunity to review it and have your attorney answer any questions you may have?
>
> [DEFENDANT]: Yes, ma'am, I did.

(COP Hr'g Tr. at 4-5.)

The court noted that the plea agreement included "a joint recommendation, for a 4-year differed [sic] imposition of sentence and a $1,000 fine, with any and all suitable treatment conditions." (COP Hr'g Tr. at 6.) Yates's attorney confirmed that the court had accurately stated the recommendation. (*Id.*) The court cautioned Yates that "**it's important to know that this is an agreement between yourself and the State. It does not bind the Court at the time of sentencing.**" (*Id.*) (emphasis added). Yates told the court that he understood the court was not bound by the agreement. (*Id.*)

The court continued to review the implications of Yates's guilty plea and the jeopardy he faced by pleading guilty:

> [THE COURT]: So, the recommendation will [be] made to Judge Knisely or any other judge that you consent to sentencing you, but if that judge does not follow the recommendation, do you understand that does not give you automatic reason to try to withdraw the guilty plea you are entering today?
>
> [DEFENDANT]: Yes, ma'am, I do.
>
> [THE COURT]: And you understand that worst case scenario, is that you [may] be sentenced to the maximum penalty, which is five years in prison and/or a $50,000 fine?
>
> [DEFENDANT]: Yes, ma'am.

(COP Hr'g Tr. at 6-7.) The court also confirmed Yates was not threatened, coerced, or intimidated to convince him to change his plea. (*Id.* at 7.) Yates expressed he thought the plea agreement was in his best interest and that he was satisfied with

the services of his counsel. (*Id.*) Defense counsel advised the court that she and Yates had a phone conversation the previous day during which they reviewed the plea agreement, and the rights Yates was waiving. (*Id.* at 7-8.) Defense counsel explained she "sent [Yates] a letter last week explaining the procedure and the questions he would be asked . . . . I think he understands it fully." (*Id.*)

Defense counsel asked Yates, "were you caring for or did you have interaction with L.D., a child who was under the age of 14 [at the time]?" (COP Hr'g Tr. at 9.) Yates responded, "Yes, ma'am, I was caring for the child." (*Id*.) Yates then affirmed that he "cause[d] bodily injury, bruising to the buttocks of L.D., by spanking L.D. on buttocks[.]" (*Id.*) With no objection from the State, the court found a sufficient basis for Yates's plea. (*Id.*) The court then accepted Yates's plea of guilty to felony assault on a minor. (*Id.*)

III. Sentencing hearing

The district court, the Honorable Mary Jane Knisely presiding, held a sentencing hearing on March 1, 2021. (Sent. Hr'g Tr.) The prosecutor advised the court:

> Judge, there is a joint recommendation in this case, and I don't usually try to pass off what has occurred with somebody else. But this was a case that was originally [assigned to a different prosecutor]. As I was getting this calendar ready for today. I was looking over this case and I seriously thought, what was I thinking; how could I have agreed to this sentence? But then I realized in going further, that it was not my

> sentence. And I had told [defense counsel] that I certainly would honor [the previous prosecutor's] recommendation. And this sentence calls for a four-year differed (sic) with a $1,000 fine.

(Sent. Hr'g Tr. at 4.) The court asked if the previous prosecutor was available; State's counsel advised that the case had been reassigned to her and it was now her case. (*Id.*)

The prosecutor explained that she was concerned because the updated Presentence Investigation Report (PSI) listed Yates as having a girlfriend, but she was unsure whether that girlfriend had children who were in contact with Yates. (*Id.*) The State advised that if Yates was in contact with children, it would be appropriate for Yates to take a parenting class as one of his sentence conditions. (*Id.* at 5.) She also stated that Yates's prior assault charges bothered her, although she recognized they had not resulted in convictions. (*Id.*) The prosecutor summarized,

> I just hope that the defendant takes this . . . . as a real gift from the Court if the Court goes along with this. Because this could have gone—been so much worse. . . . Judge, the State respectfully asks that you honor the agreement between the 2 parties and sentence the Defendant to the four-year [deferred] with the $1,000 fine.

(*Id.*) The court then asked to hear from the defense attorney. (*Id.*)

Defense counsel responded that Yates "does have a prior record of dismissals of what are serious assault charges[,] [but this] is an appropriate disposition for him." (Sent. Hr'g Tr. at 6.) Defense counsel advised that she

had seen the photographs of the victim and conceded that Yates's assault on the child had resulted in "significant bruising." (*Id.*) She argued that Yates had entered a sober living placement on his own volition and had a "significant amount of initiative and motivation to successfully complete his sentence[.]" (*Id.*) Defense counsel then stated that Yates "really does need a comprehensive mental health evaluation as he indicates that he suffers from multiple disorders, including schizophrenia and PTSD[,]" and asked the court to ensure he obtained the mental health evaluation early on during his supervision. (*Id.* at 6-7.) Defense counsel asked the court to sentence Yates pursuant to the terms of the negotiated plea agreement. (*Id.*) She added that Yates confessed his crime to law enforcement shortly after they contacted him and asked the court to consider his acceptance of responsibility when imposing sentence. (*Id.*)

The court declined to defer imposition of Yates's sentence based upon its consideration of the PSI, Exhibit A,[2] the steps Yates had taken, the alleged facts, Yates's allocution, the "situation in this particular offense," and Yates's mental health and other needs stemming from his "significant mental issues." (Sent. Hr'g

[2] The court was referring to Defendant's Exhibit A, which is a letter from Yates's case manager at the Damascus House sober living program.

Tr. at 7-8.) The court specified that it was not sending Yates to prison but was placing him on probation. (*Id.* at 8.) The court explained its sentence:

> And this will remain on your record, sir. So, that is for a couple reasons. One: this injury is severe, and the Court is to consider the aggravating factors as well as any mitigating factors. Your rehabilitation aspects, your potential for that, and you've demonstrated that you are working on that already. So, I thank you for that. That being said, you need someone to monitor your mental health and get you the anger and aggression and parenting type classes that you are going to need to have a successful life at age 24. So, it is going to be a three-year Department of Corrections sentence that will be suspended. You will have reporting requirements, and I will hope that the Department of Corrections will place you on the mental health case load given the schizophrenic and some other significant PTSD diagnoses.

(*Id.*) After learning that Yates did not have a girlfriend or children of his own, the court continued:

> based upon the fact that the injuries as described in the P.S.I. and are inconsistent with a single spanking, covering the entire buttocks extending onto the lower quarter of L.D.'s back, and far wider in scope than an single hand, and the explanation as to the reason for the spanking and the age of the child, is the reason that I think that you need some sort of parameters on dealing with children, if you are ever going to deal with them again.

(*Id.* at 9.)

Defense counsel objected to the court's sentence because it did not follow the parties' joint recommendation. (Sent. Hr'g Tr. at 10.) Defense counsel stated, "I also object to State's counsel's statement here today . . . . [because those statements] constitute a violation of the State's obligations to concur in that

recommendation." (*Id.*) The court responded that as to Yates's "objection **about the State and their situation between attorneys, I didn't consider that at all. I considered the facts of this case, which are severe, and the sentencing parameters** of up to five years in the state prison and a $50,000 fine." (*Id.* at 10-11.) (emphasis added.)

The defense repeated its objection to the court's decision to not follow the joint recommendation for sentence. (Sent. Hr'g Tr. at 11.) The court responded, "this was not a binding plea agreement." (*Id.* at 12.) The court explained it disagreed with the joint recommendation for the four-year deferred imposition of sentence based upon "paragraph four, page three of the P.S.I. in looking at what the injuries were." (*Id.*) In the written Judgment, the district court included its reasons for a suspended sentence. (Appellant's App. A at 6.) The court explained that the PSI reflected previous criminal charges that had been dismissed, but that "illustrate[d] a propensity for violence on the part of the Defendant[,]" and that some of the bruises on the child "were in various stages of healing, contradicting the idea that this was a one time assault." (*Id.*)

The court's Judgment reiterated what the judge had explained at the sentencing hearing:

> The State was bound by an agreement made by the original prosecutor and did not backtrack on that agreement, however, the agreement was between the State and the Defendant and not the Court. The Court determined that based upon the egregiousness of the assault on a very

> small child, because she allegedly urinated on herself, and the Defendant's propensity for violence, a deferred was not warranted. . . . The Court, for the above-stated reasons, gave Defendant a suspended sentence to demonstrate whether he can successfully follow the conditions of probation.

(Appellant's App. A at 6.)

SUMMARY OF ARGUMENT

The record demonstrates that the district court's decision to sentence Yates to a Department of Corrections suspended sentence was the court's independent decision and not influenced by the prosecutor's remarks. The district court expressly listed its reasons for the sentence both at the sentencing hearing and in its Judgment, which included the severity of the two-year-old victim's injuries and Yates's propensity toward violence. The court explained unequivocally that the prosecutor's remarks had no impact on the court's rejection of the jointly recommended deferred imposition of sentence contained in the non-binding plea agreement. The district court did exactly what it is charged with at a sentencing hearing—it tailored a sentence to Yates's unique needs and circumstances.

Further, the State did not breach the plea agreement, as it fulfilled its bargain and recommended a deferred imposition of sentence in exchange for Yates's guilty plea. Yates knew the plea agreement was not binding upon the court, and both

Yates and his counsel confirmed Yates understood he could not withdraw his plea if the court sentenced him more harshly than recommended by the plea agreement. Further, the unique facts of this case demonstrate that the prosecutor did not breach the plea agreement.

This Court should affirm Yates's sentence.

ARGUMENT

I. Standard of review

"Whether the State has breached a plea agreement is a question of law that we review de novo." *State v. Newbary*, 2020 MT 148, ¶ 5, 400 Mont. 210, 464 P.3d 999. This Court's review of legal conclusions, such as whether the sentencing court or a party has the right to choose the remedy for a breach of a plea agreement, is plenary to determine if a conclusion of law is correct. *State v. Munoz*, 2001 MT 85, ¶ 11, 305 Mont. 139, 23 P.3d 922.

This Court reviews a criminal sentence for legality. *State v. Gunderson*, 2010 MT 166, ¶ 37, 357 Mont. 142, 237 P.3d 74.

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II. The record reflects that the district court imposed a sentence based upon its independent reasoning and not based upon the prosecutor's comments.

A. The district court used its broad discretion to consider the evidence and impose an appropriate sentence after properly advising Yates that the court was not party to nor bound by the plea agreement.

Pursuant to Mont. Code Ann. § 46-12-211(1), the State and the defendant:

> may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:
> . . . .
> (c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

"If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea." Mont. Code Ann. § 46-12-211(2). This Court has "repeatedly held that a plea agreement is a contract between the State and a defendant and is subject to contract law standards." *Ellison*, ¶ 14 (citing *State v. Rardon*, 2002 MT 345, ¶¶16-17, 313 Mont. 321, 61 P.3d 132 (*Rardon II*).

"A sentencing court may consider 'any matter relevant to the disposition' of an offender." *State v. Hill*, 2009 MT 134, ¶ 27, 350 Mont. 296, 207 P.3d 307. "In determining a proper sentence, the sentencing judge may consider any relevant

evidence relating to the nature and circumstances of the crime, the character of the defendant, the defendant's background and history, mental and physical condition, and any evidence the court considers to have probative force." *State v. Rardon*, 2005 MT 129, ¶ 17, 327 Mont. 228, 115 P.3d 182.

The record clearly manifests that, regardless of any State recommendation, the district court, in its broad discretion, was not inclined to sentence Yates to a deferred imposition of sentence under the totality of the noted circumstances. The district court made it clear that the prosecutor's comments did not influence the sentence it ultimately imposed. "**I didn't consider that at all. I considered the facts of this case, which are severe, and the sentencing parameters** of up to five years in the state prison and a $50,000 fine." (Sent. Hr'g Tr. at 10-11.) (emphasis added.) The district court explained that the plea agreement was nonbinding to Yates during the change of plea hearing. (COP Hr'g Tr. at.) During the sentencing hearing, the district court considered the nonbinding nature of the plea to reject the joint recommendation and explained that the three-year DOC commitment was imposed due to factors including the extensive bruising on the child, inconsistent with Yates's admission to law enforcement, and as described in paragraph four, page three of the PSI. (Sent. Hr'g Tr. at 8-9, 12.)

The sentencing court's determination here that a deferred imposition of sentence was inappropriate is much like the court's determination in *State v. Ellison*,

2017 MT 88, 387 Mont. 243, 393 P.3d 192. There, the State and defendant Ellison entered into a plea agreement in which Ellison agreed to plead guilty to felony criminal endangerment and, in exchange, "the State agreed to recommend that Ellison receive a three-year deferred sentence for the criminal endangerment charge." *Ellison*, ¶ 6. At the change of plea hearing, the district court informed Ellison that it was not bound by the terms of the plea agreement and could impose any lawful sentence. *Id.* The court also informed Ellison that she would not be allowed to withdraw her guilty plea if the court imposed a sentence greater than that recommended in the plea agreement. *Id.* The district court also informed Ellison of the maximum penalties and sentence she could face, which included more than 11 years of incarceration. *Id.*

Prior to sentencing in *Ellison*, the parties received a PSI that "recommended a deferred sentence for the criminal endangerment offense consistent with the plea agreement." *Id.* ¶ 7. The PSI also recommended that Ellison complete a chemical dependency evaluation, a mental health evaluation, and the Cognitive Principles and Restructuring program as conditions of the deferred sentence. *Id.* At sentencing, Ellison argued that a deferred sentence would allow her to obtain treatment for her neurological disorder, which she asserted was the underlying cause of her chemical dependency that led to her criminal offenses. *Id.* ¶ 9. She "elaborated on the medical treatment she sought and her obstacles to her recovery." *Id.* The court "declined to

defer Ellison's sentence on the criminal endangerment charge because it remained unconvinced that Ellison could overcome her chemical dependency issues without the assistance of the Department of Corrections[.]" *Ellison*, ¶ 10. Instead of the recommended deferred imposition of sentence, the court sentenced Ellison to five years with the DOC with three years suspended. *Id.*

Like the court in *Ellison*, the district court here "rejected the plea agreement in order to fashion a sentence it deemed necessary[.]" *Ellison,* ¶ 19. Like the defendant in *Ellison*, Yates had serious treatment needs that the court considered in the sentence it imposed. Defense counsel emphasized that Yates suffered from multiple disorders, including schizophrenia and PTSD, while recognizing the "significant bruising" suffered by Yates's victim. (*See* Sent. Hr'g Tr. at 6-7.) As the court explained to Yates in this case, it was "not comfortable" giving Yates a deferred sentence after considering the PSI, the facts of his offense, his allocution, the situation of the offense, and his significant mental issues. (*See* Sent. Hr'g Tr. at 7-8.)

The district court laid out the specific reasons for its sentence, which centered on the severity of the injury to the child victim and Yates's substantial mental health needs. The court explained to Yates that he would have reporting requirements and that it hoped DOC placed him on their mental health case load to address his schizophrenia and significant PTSD diagnoses. (*See* Sent. Hr'g. Tr. at 8.) In its Judgment, the court again listed its reasons for sentence, which included

Yates's violent history and the fact that Yates admitted to only spanking the two-year-old once, despite the fact the child had severe bruising in various stages of healing. (Appellant's App. A at 6.)

The plea agreement was not binding upon the court, and Yates understood that the court was free to impose a harsher sentence. Like the court in *Ellison*, the court here verified that Yates knew the court was not bound by the plea agreement and that he could not withdraw his guilty plea if the court ultimately imposed a harsher sentence than the one recommended in the plea agreement. (*See* COP Hr'g Tr. at 6-7.) Although the PSI in this case did not expressly recommend a deferred imposition of sentence, it recognized the joint recommendation and recommended conditions that contemplated Yates's community placement. (D.C. Doc. 29 at 5-8.) The court disagreed with both the parties' recommendation and the PSI author and relied on its own reasoning to determine a deferred sentence was inappropriate.

B. Even if this Court looks beyond the district court's reasons for sentence, the State did not breach the plea agreement.

"Prosecutors who engage in plea bargaining must meet strict and meticulous standards of both promise and performance." *Hill* at ¶ 29. When determining whether the State has violated its plea agreement, "[e]ach case stands or falls on the facts unique to it." *Hill*, ¶ 29. There are no hard and fast criteria for determining when a prosecutor has breached a plea agreement, because each case turns on its own unique facts. *State v. Manywhitehorses*, 2010 MT 225, ¶ 14, 358 Mont. 46,

243 P.3d 412. The unique facts of Yates's case demonstrate that the prosecutor did not breach the plea agreement through her brief comments at the sentencing hearing.

Here, the prosecutor upheld her promise to recommend a four-year deferred imposition of sentence. The prosecutor's surprise about the agreement must be considered in the broader context of the proceedings. The prosecutor stated, "what was I thinking; how could I have agreed to this sentence?" (Sent. Hr'g Tr. at 14.) However, the prosecutor did not "present information and aggressively solicit testimony clearly intended to undermine the plea agreement and convince the district court the bargained sentence recommendation should not be accepted." *See Ellison*, ¶ 15. By contrast, the prosecutor told the court that though the State had concerns, it recognized that Yates was young, had no criminal convictions, and there was nothing in front of the State to "negate the agreement reached by [the former prosecutor] and [defense counsel]." (Sent. Hr'g Tr. at 5.) The prosecutor's remark that she hoped Yates realized a deferred imposition of sentence would be a "real gift" merely recognized that his crime had the potential for much harsher punishment. Her comments were more words of caution to Yates than a message to the judge to not follow the plea agreement. (Sent. Hr'g Tr. at 12.)

In *Ellison*, the State's sentencing recommendation was limited to its statement that the plea agreement contemplated a three-year deferred imposition of sentence. *Ellison*, ¶ 8. The State "provided the District Court with no other support

for a deferred sentence recommendation." *Id.* On appeal, Ellison argued that the State "impugned the fairness of the proceedings by not providing the District Court any reasons for the plea agreement's deferred sentence recommendation." *Ellison.* ¶ 16. Ellison argued that by doing so, the State breached the strict standards by which plea agreements are governed and undermined the plea agreement. *Id.* However, this Court agreed with the State that the "sentencing judge had the discretion to determine the appropriate sentence" and was aware of Ellison's addiction struggles "irrespective of the prosecutor's comments[.]" *Id.* ¶ 17.

Like the prosecutor in *Ellison*, the prosecutor at Yates's sentencing hearing did not offer evidence or argument in support of a deferred imposition of sentence, but rested on its recommendation in the filed plea agreement. (Sent. Hr'g Tr. at 4-5.) The prosecutor's comments at sentencing emphasized the jeopardy Yates faced and the State's hope that he realized the important opportunity provided by a deferred imposition of sentence. (*See* Sent. Hr'g Tr. at 5.) The prosecutor also declined to introduce what were likely disturbing photographs of the victim's injuries, and instead relied on the description of the bruising contained in the charging documents and the PSI. (*Id.* at 5-6.)

The record clearly reflects that the court relied on its own evaluation of the evidence to impose what the court determined to be an appropriate sentence. The record shows that the court addressed the defense counsel's objection to the

prosecutor's comments and unequivocally stated that the State's comments were not part of the basis for its sentence. Yates has demonstrated no reasonable likelihood that anything the State did or did not say at sentencing would have altered the independent inclination of the court in its discretion to reject a deferred imposition of sentence, regardless of the plea agreement recommendation.

CONCLUSION

The State respectfully requests this Court affirm Yates's sentence.

Respectfully submitted this 31st day of October, 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 4,854 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Bree Gee
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CERTIFICATE OF SERVICE

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