IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0195

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JONATHAN WILLIAM PRESLEY,

Defendant and Appellant.

REDACTED BRIEF OF APPELLANT

On Appeal from the Montana First Judicial District Court,
Lewis and Clark County, the Honorable Michael F. McMahon, Presiding

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STATEMENT OF THE ISSUE

Did the district court render Jonathan Presley's open plea involuntary when it failed to inform Jonathan of the maximum and minimum penalties he faced by pleading guilty?

STATEMENT OF THE CASE

On April 6, 2020, the State charged Jonathan William Presley with Failure to Register as a Violent Offender, a felony, in violation of § 46-23-504, § 46-23-505(1), and § 46-23-507, MCA (2017). (D.C. Doc. 4.) Jonathan pled not guilty. (D.C. Doc. 6.) The district court released Jonathan on his own recognizance, but he remained incarcerated on other pending charges in a separate case, BDC 2019-388. (D.C. Doc. 4.)

The State filed a Notice of Persistent Felony Offender (PFO) on April 10, 2020. (D.C. Doc. at 5.) The notice stated that if convicted, Jonathan could be "imprisoned in the state prison for a term of not less than 10 years or more than 100 years." (D.C. Doc. 5 at 3.) The notice then stated that "except as provided in Mont. Code Ann. § 46-18-222, the imposition of the first *five years* of a sentence imposed under the statute may not be deferred or suspended." (D.C. Doc. 5 at 3 (emphasis added).)

On August 5, 2020, Jonathan changed his plea to guilty. (D.C. Doc. 15.) No plea agreement or acknowledgment and waiver of rights form was filed. The parties appeared for sentencing on August 10, 2020. (D.C. Doc. 17.) The district court sentenced Jonathan to the Montana State Prison for ten years, to run consecutively to a two-year sentence imposed in BDC 2019-388. (D.C. Doc. 18.) This Court granted permission to file an out-of-time appeal, and Jonathan appealed. (D.C. Doc. 20.)

STATEMENT OF THE FACTS

[redacted]

[1] Supp. Ex. 1 is Jonathan's mental health evaluation, which contains highly private information. It was prepared in support of sentencing, and Montana law generally makes such evaluations confidential. *See* Mont. Code Ann. § 46-18-113. Pursuant to Mont. R. App. P. 10(7), undersigned counsel redated from the publicly filed version of this brief confidential information cited solely from the evaluation.

[redacted] He struggles with reading and writing. (8/10 Tr. at 4 and 20.) He used alcohol to cope with his trauma. (8/10 Tr. at 28-29.) While still struggling with alcohol addiction in 2010, Jonathan was convicted of felony Partner or Family Member Assault and was thereafter required to register as a violent offender. (D.C. Doc. 2 at 2.) He has since gotten sober. (8/10 Tr. at 28.)

Jonathan lost his housing in April of 2019. (D.C. Doc. 2.) On April 24, 2019, Jonathan came into the Law and Justice Center and updated his registry to show he was living at God's Love, a shelter in Helena. (D.C. Doc. 2 at 2.) Because living in a shelter is considered "transient" registration status, the law then required Jonathan to start registering every thirty days. Mont. Code Ann. § 46-23-504(5). Jonathan failed to update his registration in a timely manner. (D.C. Doc. 2 at 2.) On

August 5, 2019, officers arrested Jonathan while he was suicidal and charged him with unrelated charges in BDC 2019-388. (8/10 Tr. at 12.). He remained incarcerated and eight months later, the State charged him with the failure to register offense in this case and filed the PFO notice. (D.C. Docs. 4 and 5.) After the district court found Jonathan guilty after a bench trial in the other proceeding, he was assigned a new attorney here. (D.C. Doc. 9.)

Jonathan entered a guilty plea to the single count as charged in this case on August 5, 2020. (D.C. Doc. 15.) Before pleading guilty, the district court told Jonathan that "before entering your change of plea, I need to make sure you are aware of the following rights." (8/5 Tr. at 4.) The following exchange occurred:

> THE COURT: Initially, sir, are you aware of the maximum penalty which this Court can impose if you plead guilty to fail to register by a violent or sexual offender, a felony?
>
> MR. PRESLEY: Yes.
>
> THE COURT: Mr. Presley?
>
> MR. PRESLEY: Yes.
>
> THE COURT: And you are aware of the maximum possible penalty is imprisonment of not more than five years and may be fined not more than 10,000 or both?

MR. PRESLEY: Yes.

(8/5 Tr. at 4.)

The district court went on to ensure that Jonathan knew he was entitled to a trial and what rights he would be waiving by pleading guilty. (8/5 Tr. at 4-5.) Jonathan's counsel then told the district court there was no plea agreement because Jonathan was "not in agreement with the State." (8/5 Tr. at 6.)

The prosecutor then interrupted and said to the judge, "Your Honor, if I may interject?" (8/5 Tr. at 6.) The prosecutor continued, "Just with respect to the maximum possible punishment; I agree that under failing to register it is a five-year max. However, in this specific case the State did file a notice of intent to perceive [sic.] as a persistent felony offender at sentencing and sentence the defendant as a persistent felony offender. And under the subsection having to do with his having been a persistent felony offender at the time of his last felony offense, I believe his minimum exposer [sic.] in this case is ten years to the State prison. I just didn't – I know that goes more to sentencing, but as far as advising him of the maximum exposure, I thought that it would be important to recognize that." (8/5/ Tr. at 7.)

The district court thanked the prosecutor, but then immediately asked Jonathan, "Sir, have you been coerced, threatened, or promised any benefits if you plead guilty?" (8/5 Tr. at 7.) The district court never told Jonathan the actual mandatory minimum or maximum penalty, or asked Jonathan if he understood it was not the five years the court had previously told him. No acknowledgment or waiver of rights was signed or filed with the court. Because Jonathan could not recall the details of the charge, he entered an *Alford* plea. (8/5 Tr. at 9.) The district court accepted his plea and found that it was knowing and voluntary. (8/5 Tr. at 11.) In order to review a recent mental health evaluation Jonathan completed, the district court set sentencing for August 10, 2020. (8/5 Tr. at 15.)

At sentencing, the district court addressed the mental health evaluation. (8/10 Tr. at 4.) The court also acknowledged that Jonathan has "trouble reading," and asked if he "had an opportunity to have someone go through both of those documents." (8/10 Tr. at 4.) Jonathan responded, "Yeah, a little bit." (8/10 Tr. at 4.) The court asked Jonathan's attorney if she needed additional time and she responded

that "although [Jonathan] has trouble understanding everything in them, he is comfortable moving forward today." (8/10 Tr. at 5.)

The district court then asked the prosecutor for her sentencing recommendation. (8/10 Tr. at 6.) The prosecutor replied, "I believe pursuant to statute and case law, the – you, the Court, is required to sentence him to a minimum of ten years to the State prison, and that's what I would ask the Court to do in this case." (9/10 Tr. at 15.) The court then asked the prosecutor the following:

> THE COURT: Miss Jerstad, in the notice that was filed, it's indicated on page 3 that the state, "Except as provided in Montana Code Annotated 46-18-222, the imposition of the first five years of his sentence imposed under the statute may not be deferred or suspended." And you rely upon 46-18-502(2) with respect to the PFO, and my review of that statute provides that it must run consecutive to any sentence. But also, it's all the ten years cannot be suspended. The first ten years, not the first five years. So I'm a little confused, and I am just asking for some direction from the State.
>
> MISS JERSTAD: Okay. Your Honor, I believe – I think that may have been an erroneous typo with respect to the five-year. I – I think the State intended and had proceeded under the other subsection that I thought we had cited in the notice that he was – his –his prior convictions for PFMA and clandestine meth drug lab had made him, essentially, a double PFO, meaning that the minimum was ten. So if I – if I left in there a reference to the five-year minimum, that was a mistake. It should be a ten-year minimum, and that's what the State's asking the Court to do in this case.

> THE COURT: Thank you. Anything further from the State's recommendation in either case?

(8/10 Tr. at 15-17.)

The district court never revisited the maximum or mandatory minimum possible sentence with Jonathan before asking for his attorney's recommendation. Defense counsel noted that Jonathan's "failure to register did happen when he was transient, but I believe that period of time was rather short, one to two months." (8/10 Tr. at 21.)

The district court then asked Jonathan if he had anything to say. (8/10 Tr. at 26.) Jonathan told the court, "I'm confused over a lot of this." (8/10 Tr. at 26.) He said he was "confused how I have been the one to be up this bad feeling guy." (8/10 Tr. at 26.) He continued to explain that he was "confused about all this," focusing on why certain evidence was not brought into the bench trial in his other case. (9/10 tr. at 26.) He then said again, "And – it's confusing, you know what I mean? I –I don't – Your Honor, I just don't know what – how to respond or what to say." (8/10 tr. at 27.) Jonathan told the court that he has not been violent since he has become sober from alcohol and asked the court to

consider his mental health and let him continue treatment for that. (8/10 Tr. at 27-29.)

The district court sentenced Jonathan to ten years MSP, none suspended, as a persistent felony offender. (8/10 Tr. at 38.) The reason for the sentence was because "there is a reason that the Montana legislature has imposed this requirement" and Jonathan "has been obligated to register for a long, long time." (8/10 Tr. at 38.)

STANDARD OF REVIEW

The question of whether a plea was entered voluntarily is a mixed question of law and fact, which this Court reviews de novo. *State v. Humphrey*, 2008 MT 328, ¶ 13, 346 Mont. 150, 154, 194 P.3d 643, 646.

Plain error review is appropriate if the unpreserved error implicates a fundamental constitutional right and "failing to review the alleged error may result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the proceeding, or compromise the integrity of the judicial process. *State v. Valenzuela*, 2021 MT 244, ¶ 10, 405 Mont. 409, 415, 495 P.3d 1061, 1065 (internal citation omitted).

SUMMARY OF THE ARGUMENT

Jonathan entered a guilty plea—without a plea agreement or acknowledgment and waiver of rights—to a charge where he faced a mandatory minimum of ten years and a maximum of 100 years in prison. To ensure that this plea was voluntary and knowing, Montana law required that the court—not the prosecutor or defense counsel—ensure that Jonathan understood the maximum and mandatory minimum penalties he faced by pleading guilty.

Instead, the court never told Jonathan the effect of the PFO sentencing enhancement, which changed the maximum possible penalty for his failure to register offense from 5 years to 100 years. The only time the court asked Jonathan if he understood the time he was facing, the court incorrectly told him it was a maximum of five years. When the prosecutor brought up later that the mandatory minimum was ten years, the court never revisited the topic with Jonathan. No one ever mentioned the potential maximum of 100 years.

Further muddying the waters, the persistent felony notice filed by the State had a "typo." It incorrectly stated that the first five years—and not the first ten years—could not be suspended. This was not

brought up until Jonathan's sentencing hearing, which was five days after the court accepted his guilty plea. And even after the prosecutor admitted her mistake, the court never asked Jonathan if he understood the difference. Instead, the court just proceeded to sentence Jonathan to ten years in prison.

Because the court failed to inform and ensure that Jonathan knew what he was facing by pleading guilty, the court rendered Jonathan's plea involuntary and unknowing. This error compromised the integrity of the proceeding and resulted in a manifest miscarriage of justice. This Court must reverse and remand to allow Jonathan to withdraw his plea.

ARGUMENT

By failing to inform and ensure Jonathan understood the maximum and mandatory minimum penalties he faced due to the persistent felony offender enhancement, the district court rendered Jonathan's open plea involuntary.

The United States Constitution requires that a guilty plea be knowing, intelligent, and voluntary. *Boykin v. Alabama*, 395 U.S. 238 (1965). To this end, the record must show that the defendant voluntarily relinquished his rights and understood the nature of the

charges and consequences of the plea. *Brady v. U.S.,* 397 U.S. 742, 748 (1970). *See also Boykin*, 395 U.S. at 243 (indicating a silent record is insufficient to support a finding that a defendant voluntarily, knowingly and intelligently waived his constitutional rights by entering a guilty plea, and stating the court must "canvas[] the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence.")

Montana adopted the standard articulated in *Brady* and requires that "a criminal defendant must be fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel." *State v. Hendrickson*, 2014 MT 132, ¶ 15, 375 Mont. 136, 141, 325 P.3d 694, 697 (internal citation omitted).

Accordingly, "the test for determining the validity of a guilty plea is whether the plea represents a voluntary, knowing, and intelligent choice among the alternative courses of action open to the defendant." *State v. Melone*, 2000 MT 118, ¶ 14, 299 Mont. 442, 446, 2 P.3d 233, 236 (internal citation omitted).

To ensure a defendant is making a voluntary, knowing and intelligent choice, Montana law requires district courts to engage in a detailed inquiry to ensure understanding of the charge and consequences prior to the plea. Mont. Code Ann. §§ 46-12-204, 46-12-210, 46-12-212, 46-16-105(1).

Section 46-12-210(1)(a)(ii)-(iii), MCA, provides, in relevant part, that "[b]efore accepting a plea of guilty or nolo contendere, the court *shall determine* that the defendant understand…the mandatory minimum penalty provided by law, if any; [and] the maximum penalty provided by law, *including the effect of any penalty enhancement provision*. (emphasis added). In addition, § 46-16-105(1)(a), MCA, provides that a guilty plea must be accepted only after "the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea."

The plain language of these statutes requires the court—not the defense attorney or prosecutor—to inform the defendant of the penalties that might be imposed and to ensure that the defendant understands the potential consequences of changing his plea. When a plea is entered

following misinformation, it is not knowingly made. *State v. Roach*, 1999 MT 38, ¶ 15, 293 Mont. 311, 315, 975 P.2d 817, 819. Further, "[i]f there is any doubt that a guilty plea was not voluntarily or intelligently made, the doubt must be resolved in favor of the defendant." *Melone*, ¶ 14.

In *Melone*, a similar case to this, the Court found that the district court failed to adequately inform Melone of the possible time he was facing based on his status as a persistent felony offender. *Melone*, ¶ 22. The State argued that at the time Melone entered his plea, he knew that he faced the persistent felony offender enhancement provision based on the following: the State gave Melone a persistent felony offender notice; the prosecutor informed Melone of a possible persistent felony penalty immediately prior to the court's questioning of Melone; and Melone's signed acknowledgment stated he understood that he faced the enhancement because of his prior record. *Melone*, ¶ 13. Additionally, the State argued that although the district court failed to tell Melone the maximum possible penalty, the prosecutor informed Melone of the enhancement penalty immediately prior to the court's

questioning, which cured any defect in the court's colloquy. *Melone*, ¶ 18.

This Court disagreed. Because the plain language of Mont. Code Ann. § 46-16-105(1)(b) "expressly requires that the court inform the defendant of the maximum penalty," "[t]he prosecutor's statement was insufficient because it was not information provided by the court…." *Melone*, ¶ 18. *See also, Roach*, ¶¶ 13-14 (holding that trial court's error in misinforming defendant of the maximum possible sentence required reversal as trial courts must meet the statutory requirements of § 46-12-210, MCA (citing *State v. Enoch*, 269 Mont. 8, 18, 887 P.2d 175, 181 (1994)).

Like in *Melone*, the district court here also fell short of the statutory requirements of §§ 46-12-210 and 46-16-105, MCA. Except here, Jonathan had even less notice than in *Melone*. Here, the district court never told Jonathan the mandatory minimum and maximum possible penalties applicable under the persistent felony offender sentencing enhancement. The court only once asked Jonathan if he understood the maximum possibly penalty, and it was at this time that the court told him that the "maximum possible penalty is imprisonment

of not more than five years." (8/5 Tr. at 4.) Jonathan could not have entered his plea knowingly given this misinformation regarding the maximum penalty and the lack of any information regarding the mandatory minimum sentence.

Although the prosecutor later mentioned the ten-year mandatory minimum to the court, the court simply responded, "Thank you," and moved on. (8/5 Tr. at 7.) The court never revisited the topic with Jonathan or ensured that he knew that he was now subject to at least 10 years in prison instead of the 5 year maximum the court had previously discussed with him. And no one ever mentioned the maximum penalty of 100 years.

Regardless, it is immaterial what the parties said about the penalties. It was the court's duty alone to inform Jonathan of the potential consequences of his guilty plea and to ensure Jonathan understood those potential consequences. The court did not do that. Therefore, as held in *Melone*, any mention by the prosecutor of the penalty enhancement is insufficient.

The entering of a guilty plea "is more than an admission of conduct; it is a conviction." *Boykin*, 395 U.S. at 242. In turn, several

"constitutional rights are involved in a waiver that takes place when a plea of guilty is entered." *Boykin*, 395 U.S. at 243. Jonathan faced significant incarceration, which required the "utmost solitude" by the court in determining he had full knowledge of the consequences of his plea. *Boykin*, 395 U.S. at 243-244. Because the court never told Jonathan the possible penalties, or made a record that Jonathan understood what he was facing by pleading guilty, there is no way to ensure that Jonathan changed his plea and waived his constitutional rights to remain silent, to a jury trial, and to confront his accusers knowingly and intelligently.

Indeed, the court's failure was especially harmful looking at the circumstances here. Jonathan suffers from cognitive delays caused by a head injury. He has trouble with reading and writing. He never reviewed or signed an acknowledgment or waiver of rights. There was no plea agreement. And there was "an erroneous typo" in the persistent felony enhancement notice filed by the State. (8/10 Tr. at 16.)

Jonathan told the court he was confused about what was happening four different times during his colloquy. He was being sentenced at the same time in two different cases, and it is clear from

the record that the focus was on his other case. However, this is the case where Jonathan faced more time. And this is the case where the required statutory procedure fell by the wayside. The court's error in not following § 46-12-210, MCA, thus compromised the fundamental fairness and compromised the integrity of Jonathan's change of plea proceeding. Therefore, because the involuntary plea implicates Jonathan's constitutional rights, plain error review is appropriate. *See Valenzuela*, § 10.

Because the district court failed to ensure Jonathan knew the possible penalty—including that he would have to serve a minimum of ten years consecutive to his other case—of the sentencing enhancement, and "if any doubt exists on the basis of the evidence presented regarding whether a guilty plea was voluntarily or intelligently made, the doubt must be resolved in the favor of the defendant," this Court must remand and allow Jonathan to withdraw his plea. *See Melone*, ¶ 14.

CONCLUSION

The district court rendered Jonathan's guilty plea involuntary because the court failed to adequately advise Jonathan the

consequences of his plea. This Court must reverse and remand to allow Jonathan to withdraw his guilty plea.

Respectfully submitted this 1st day of November, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,653, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Jeavon C. Lang
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APPENDIX