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STATE OF MONTANA,

Plaintiff and Appellee,

v.

SHANE MEDORE MAGGI,

Defendant and Appellant.

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**REPLY BRIEF OF APPELLANT**

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On Appeal from the Montana Third Judicial District Court,  
Powell County, the Honorable Ray J. Dayton, Presiding

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**TABLE OF CONTENTS**

TABLE OF CONTENTS .....i

TABLE OF AUTHORITIES.....ii

ARGUMENT ..... 1

I. The state attempts to insert its intent as relevant to sentence  
legality..... 2

II. Possible designation as a PFO is not an aggravating  
circumstance..... 3

CERTIFICATE OF COMPLIANCE..... 5

## TABLE OF AUTHORITIES

### Cases

<i>City of Whitefish v. Curran</i> , 2023 MT 118, 412 Mont. 499, 531 P.3d 547 .....	3
<i>State v. Heafner</i> , 2010 MT 87, 356 Mont. 128, 231 P.3d 1087 .....	1
<i>State v. Heath</i> , 2004 MT 58, 320 Mont. 211, 89 P.3d 947 .....	1
<i>State v. Williams</i> , 2010 MT 58, 355 Mont. 354, 228 P.3d 1127 .....	1
<i>State v. Yeaton</i> , 2021 MT 312, 406 Mont. 465, 500 P.3d 583 .....	3

### Statutes

Mont. Code Ann. § 46-18-219 .....	1
Mont. Code Ann. § 46-18-220 .....	1, 2, 3
Mont. Code Ann. § 46-18-301 .....	3
Mont. Code Ann. § 46-18-303 .....	2
Mont. Code Ann. § 46-18-303(3) .....	2, 3, 4
Mont. Code Ann. § 46-18-305 .....	2
Mont. Code Ann. § 46-18-310 .....	3

### Other Authorities

<i>Black's Law Dictionary</i> (8th ed. 2004) .....	3
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The Defendant and Appellant, Shane Medore Maggi, respectfully replies to the State's Answer as follows:

### **ARGUMENT**

Maggi agrees with the State that the proper remedy here is remand for resentencing. *See State v. Heafner*, 2010 MT 87, ¶¶ 9-11, 356 Mont. 128, 231 P.3d 1087 (citing *State v. Heath*, 2004 MT 58, ¶ 49, 320 Mont. 211, 89 P.3d 947); (Appellee Response, p. 22). The remaining counts run concurrent to Maggi's life sentence, thus striking that illegal sentence will affect the entire sentence. (DC Doc. 103, p. 4-5). Maggi argues on appeal that the District Court illegally sentenced Maggi to a life sentence for his Aggravated Assault conviction. The State does not dispute that Maggi's claim is properly before the Court.

If an imprisoned defendant is convicted of aggravated assault, and properly noticed of such fact,<sup>1</sup> a sentencing court may sentence the offender to life imprisonment as provided by Montana's Death Penalty

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<sup>1</sup> The State suggests that Maggi qualified for a life sentence under Mont. Code Ann. § 46-18-219. (Appellee Response, p. 11). The State did not proceed under this statute, they are stuck with Mont. Code Ann. § 46-18-220. "We must take the case as it comes to us." *State v. Williams*, 2010 MT 58, ¶ 20, 355 Mont. 354, 228 P.3d 1127.

statutory scheme (Part 3). Mont. Code Ann. § 46-18-220. At a minimum, a life sentence requires at least one aggravating circumstance to be present, as applicable here for the defendant to have been previously found to be a Persistent Felony Offender (PFO) under Montana law. Mont. Code Ann. § 46-18-305, 303.

The State argues in response that 1) “the State explicitly requested only imposition of a life sentence, making application of Part 3 unnecessary, including any obligation to made [sic] findings relative to those provisions[,]” (Appellee Response, p. 17-18); and 2) the District Court had authority to sentence Maggi to life imprisonment under Part 3 because a “possible designation as a PFO” is synonymous with being “previously found to be a PFO”, the aggravating circumstance specified by Mont. Code Ann. § 46-18-303(3), (Appellee Response, p. 21).

**I. The state attempts to insert its intent as relevant to sentence legality.**

Here, the question is not whether the State intended to pursue the death penalty from the outset of prosecution, the question is the legality of the sentence, or whether the District Court held statutory authority and complied with sentence parameters and mandates of applicable

sentencing statutes. *City of Whitefish v. Curran*, 2023 MT 118, ¶ 13, 412 Mont. 499, 531 P.3d 547 (citing *State v. Yeaton*, 2021 MT 312, ¶ 8, 406 Mont. 465, 500 P.3d 583).

Mont. Code Ann. § 46-18-220 plainly states that if an offender is convicted of aggravated assault “while in official detention...shall...be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310.” There is no dispute that Maggi was in official detention during the commission of the present offense. The term “provided” generally means “[o]n the condition or understanding”, “except”, or “and”. *Provided*, *Black’s Law Dictionary* (8th ed. 2004). In other words, a life sentence is lawful “on the condition” that Part 3 is complied with by a sentencing court. The State’s “intent” behind prosecuting Maggi is highly irrelevant to such analysis.

## **II. Possible designation as a PFO is not an aggravating circumstance.**

No dispute is made that Maggi met statutory requirements to be sentenced as a first time PFO. Maggi offers instead that no aggravating circumstance was present under Part 3 to provide for a lawful life sentence. The District Court incorrectly concluded that a

“factual basis for the mandatory life sentence” was present. (DC Doc. 103, p. 3). As the State correctly points out, “[f]inding that a defendant meets the definition of PFO occurs at sentencing[.]” (Appellee’s Response, p. 20). Here, Maggi’s contemporaneous PFO designation is not an aggravated circumstance contemplated by Part 3, such designation is only applicable to any future cause.

Next, the State claims it is an “absurd result” for “PFO designation or findings . . . to predate commission of the instant offense[.]” for an aggravating circumstance to be found under Part 3. (Appellee Response, p. 20-21). The Montana Legislature plainly wrote such due process requirement into statute. The State finds it “absurd” that it cannot dilute a person’s constitutional due process rights.

Respectfully submitted this 19th day of December, 2023.

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply 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 751, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Joshua James Thornton  
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## CERTIFICATE OF SERVICE

I, Joshua James Thornton, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 12-19-2023:

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