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STATE OF MONTANA
Case Number: DA 23-0058

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0058

IN THE MATTER OF:

A.B.,

Respondent and Appellant.

ANDERS BRIEF OF APPELLANT

On Appeal from the Montana Eighteenth Judicial District Court,
Gallatin County, the Honorable Peter B. Ohman, Presiding

APPEARANCES:

CHAD WRIGHT
Appellate Defender
MICHAEL MARCHESINI
Assistant Appellate Defender
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147
Michael.Marchesini@mt.gov
(406) 444-9505

ATTORNEYS FOR DEFENDANT
AND APPELLANT

AUSTIN KNUDSEN
Montana Attorney General
TAMMY K PLUBELL
Bureau Chief
Appellate Services Bureau
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

AUDREY CROMWELL
Gallatin County Attorney
ERIC KITZMILLER
Deputy County Attorney
1709 West College St., Ste. 200
Bozeman, MT 59715

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

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INTRODUCTION

Upon conscientious examination of the record, undersigned counsel advises this Court he has not identified any meritorious issues for Defendant and Appellant A.B. to present on appeal. Counsel moves this Court for permission to withdraw from representing A.B. in this appeal under *Anders v. California*, 386 U.S. 738 (1967), and Mont. Code Ann. § 46-8-103. If this Court determines there are issues that merit briefing, counsel requests the Court specify the issues to be briefed and deny the motion without discharging undersigned counsel.

Pursuant to § 46-8-103(2), counsel has mailed a letter to A.B. at his last known address, informing him of counsel's decision and A.B.'s right to file a response to this motion directly with the Court.

STATEMENT OF THE ISSUE

Whether undersigned counsel and the Appellate Defender Division should be permitted to withdraw from this appeal in accord with the criteria established by the United States Supreme Court in *Anders*.

STATEMENT OF THE CASE

On November 29, 2022, the State filed a petition to involuntarily commit A.B. (District Court Document (Doc.) 71.) The District Court held an initial hearing that same day. (11/29/2022 Hearing Transcript (11/29 Tr.) at 1–15.) The court then held a full, contested commitment hearing on December 1, 2022. (12/1/2022 Hearing Transcript (12/1 Tr.) at 1–67.)

At the conclusion of the commitment hearing, the District Court found A.B. suffered from a mental disorder, Bipolar I, that rendered him incapable of providing for his basic needs. (12/1 Tr. at 65; Doc. 77 at 1.) The court committed him to the Montana State Hospital (MSH) for a period of 90 days, and it authorized MSH to administer A.B.'s medication involuntarily. (12/1 Tr. at 65; Docs. 77, 78 (order for commitment and reasons requiring commitment, attached as Appendix A).)

A.B. filed a timely notice of appeal. (Doc. 79.)

STATEMENT OF THE FACTS

In the late afternoon of November 28, 2022, Bozeman police officer Brett Logan responded to a call of a "disorderly individual" in the lobby

of the detention center. (12/1 Tr. at 6, 8.) As he approached the detention center, he was "flagged down" by A.B. in the parking lot. (12/1 Tr. at 6.) A.B., who was homeless, asked Logan for a ride to the Warming Center to retrieve his hat. (12/1 Tr .at 7.) Logan described A.B.'s eyes as "hollow." (12/1 Tr. at 7.) He testified it was below freezing outside, but A.B. was wearing tennis shoes and was not wearing gloves or a winter hat. (12/1 Tr. at 8.)

Dispatch had told Logan that A.B. had "eaten a mouthful of sidewalk salt" before he got there. (12/1 Tr. at 8.) Logan asked A.B. if this was true, and A.B. said no, he had been eating gooseberries. (12/1 Tr. at 8–9.) Logan observed "several grains" of sidewalk salt stuck in A.B.'s beard. (12/1 Tr. at 9.) Uncertain of the medical effects of consuming sidewalk salt, Logan asked A.B. if he would be willing to go to the hospital, and A.B. agreed. (12/1 Tr. at 9–10.)

In the process of getting into the patrol car, Logan observed A.B. pull out a hand-rolled cigarette and eat it. (12/1 Tr. at 10.) Logan transported A.B. to the emergency room. (12/1 Tr. at 10.) Logan testified A.B. engaged in "nonsensical" conversation during the ride

there. (12/1 Tr. at 10–12.) He also testified A.B. was cooperative with him during their entire interaction. (12/1 Tr. at 13.)

Hillary Jones, a crisis intervention specialist in the hospital's emergency department and a certified "professional person," evaluated A.B. after Logan brought him to the hospital. (12/1 Tr. at 22.) Jones testified A.B. was "actively responding to internal stimuli" and "motioning about the room to things that were not there." (12/1 Tr. at 23.) A.B. indicated he believed one of the nurses was trying to harm him, and he said he was going to harm her in self-defense. (12/1 Tr. at 23–24.)

Jones recalled that A.B. tried to eat inedible objects in the hospital room, such as business cards, fabric from his clothing, scrubs, and a penny. (12/1 Tr. at 25.) She stated A.B. had to be handcuffed to the bed to prevent him from doing this. (12/1 Tr. at 25.) A.B. had his mental health medication on him, but he attempted to take "several" doses of it in the hospital, so hospital staff took it from him. (12/1 Tr. at 28.)

Jones had previously evaluated A.B. in the emergency room on three other occasions, and she said he was "definitely more psychotic" on November 28 than on the previous occasions. (12/1 Tr. at 26.) Jones

said A.B. had no insight into the severity of his mental condition, and "he told me that he was fine." (12/1 Tr. at 28.)

On November 29, the State filed a petition for A.B.'s involuntary commitment.[1] (Doc. 71.) The petition alleged A.B. suffered from a mental disorder, had recently "displayed bizarre behavior and inability to meet his basic needs," and required commitment to MSH for up to three months. (Doc. 71 at 2–5.)

The petition included a report of Jones's evaluation. (Doc. 71, Ex. A.) In her report, Jones wrote she diagnosed A.B. with schizophrenia, discussed his concerning behaviors in the hospital, opined he could not be trusted to voluntarily take his medication, and concluded he could not meet his basic needs of health, safety, shelter, or food, as a result of his mental disorder. (Doc. 71, Ex. A.) Jones likewise testified at the commitment hearing that she believed, to a reasonable degree of

[1]Prior to the petition at issue in this appeal, the State had previously filed at least nine petitions for A.B.'s involuntary commitment. (Docs. 1, 9, 16, 28, 34, 46, 53, 58, 63.) The record shows six of these petitions resulted in A.B.'s commitment—three times to a community placement, and three times to MSH. (Docs. 8, 15, 43, 52, 55, 61.) Prior to the present petition, A.B. most recently discharged from an MSH commitment on November 15, 2022. (*See* Docs. 61, 62.) The State filed a commitment petition on November 23, but the District Court dismissed that on November 28, due to its inability to find a professional person to examine A.B. within the statutorily required five days. (Docs. 63, 70.)

medical certainty, A.B. was suffering from the mental disorder of "schizophrenia spectrum and other psychotic disorder" and this prevented him from meeting his basic needs. (12/1 Tr. at 27–28.)

The State's commitment petition also contained an attached statement of A.B.'s legal rights. (Doc. 71, Ex. B.) The statement listed over a dozen rights, but it did not include the right to a jury trial. (Doc. 71, Ex. B.)

At the initial appearance, the District Court asked A.B. if he had reviewed the State's petition, and he said no. (11/29 Tr. at 3.) A.B.'s counsel interjected that she had spoken briefly with A.B. over the phone about the petition. (11/29 Tr. at 3–4.) The court then proceeded to summarize for A.B. the contents of the petition, and it read aloud A.B.'s rights the petition listed. (11/29 Tr. at 4–10.)

A.B.'s counsel preemptively objected to the District Court considering any facts that occurred prior to November 28, reasoning "those were included in [A.B.'s] last commitment proceeding [that the State initiated on November 23], which has been dismissed." (11/29 Tr. at 10.) The District Court rejected this request, explaining it had dismissed that most recent prior petition "on a procedural matter" and

had not "address[ed]" facts alleged in that petition about A.B.'s mental condition. (11/29 Tr. at 10–11.) The court stated that any week-old facts about A.B.'s condition were "still relevant" and "not stale, they're just a few days ago." (11/29 Tr. at 11.)

Prior to the commitment hearing, a second professional person, Shannon Maroney, filed a report of her evaluation of A.B., which she conducted by video while he was at MSH. (Doc. 76.) Maroney wrote that A.B. told her he was bipolar, admitted to having recently eaten things such as Kleenex and his own blood, and said he had "refused some medications while at MSH because he does not want to become addicted." (Doc. 76 at 3.) Maroney observed A.B. "eating a leaf" during their session. (Doc. 76 at 3.)

She wrote this was A.B.'s ninth admission to MSH, and his sixth in the past five months. (Doc. 76 at 3.) She noted A.B. also had "a history of other hospitalizations/crisis facility admissions." (Doc. 76 at 4.) She wrote that according to the MSH records she reviewed, A.B. had been prescribed antipsychotics, mood stabilizers, antidepressants, and anti-anxiety medications, and had "a history of non-adherence with prescribed medications." (Doc. 76 at 4.)

A.B. told her he had been homeless for the past two years. (Doc. 76 at 4.) He frequently stayed at the Warming Center, but he was recently suspended from services there due to his threatening staff. (Doc. 76 at 4.)

Maroney observed A.B.'s thought process was "nonsensical, disorganized, tangential." (Doc. 76 at 4.) She diagnosed him with Bipolar I disorder. (Doc. 76 at 5.) She based this diagnosis on the following symptoms: "most recent/current episode of mania marked by mood instability, paranoia, delusional thoughts, hallucinations, disorganized and bizarre behavior, poor insight and severely impaired judgment." (Doc. 76 at 5.)

Maroney wrote A.B. "was unable to formulate a plan for housing and demonstrated no insight into his mental health condition or need for treatment." (Doc. 76 at 5.) She stated it appeared he had been "mentally decompensating for several months and is clearly unable to function on his own in the community." (Doc. 76 at 5.)

Maroney opined A.B. was unable to meet his basic needs due to his mental health condition and therefore required commitment. (Doc. 76 at 5; *see also* 12/1 Tr. at 42.) She recommended against outpatient

treatment or short-term inpatient treatment, due to A.B.'s "recent unsuccessful attempts in the community." (Doc. 76 at 5.) She stated he "shows resistance to medications other than fish oil" and has "a lengthy history of being unsuccessful with medication adherence on his own." (Doc. 76 at 5.) She recommended he be committed to MSH for up to 90 days and that his medications be administered involuntarily. (Doc. 76 at 5.)

Maroney also testified at the commitment hearing about her evaluation and recommendations. (12/1 Tr. at 34–50.) She recalled that A.B. told her he believed the judge was "lying" and out to get him. (12/1 Tr. at 38.)

She testified A.B. needed to have medications administered involuntarily, because he did not understand the importance of taking his medications. (12/1 Tr. at 39, 45.) When the prosecutor asked her if A.B. knew what medication he had to take to treat his condition, A.B. interjected, "Fish oil." (12/1 Tr. at 41.) The prosecutor asked Maroney if fish oil was an appropriate treatment for A.B.'s mental condition, and A.B. again interjected, "Yes," before Maroney answered, "No, not in and of itself." (12/1 Tr. at 41.)

Maroney said she considered less restrictive alternatives for placement and treatment besides MSH. (12/1 Tr. at 44.) But she testified "the less restrictive options would not be appropriate for [A.B.] at this time, meaning that he does not have the insight/willingness to engage in the outpatient treatment." (12/1 Tr. at 44.)

A.B.'s counsel asked Maroney about the apparent incongruity between her diagnosis of bipolar disorder and Jones's diagnosis of schizophrenia. (12/1 Tr. at 49.) Maroney agreed these were "different" disorders but disputed that they were "very different." (12/1 Tr. at 49.) She stuck to her diagnosis of bipolar disorder, but she testified it was reasonable to believe A.B. could suffer from both. (12/1 Tr. at 49–50.)

Sergeant Michael Flohr also testified at the commitment hearing about observations he made of A.B. around November 21 or 22, roughly a week before these proceedings began. (12/1 Tr. at 17.) A.B. was in a cell at the detention center, awaiting transportation to the hospital for an emergency mental health evaluation. (12/1 Tr. at 17–18.) Flohr testified A.B. would take his clothes on and off, masturbate openly, and play with his own feces. (12/1 Tr. at 17–18.) He testified A.B. threw his food in the toilet, and then took it out of the toilet and ate it. (12/1 Tr. at

18.) By the time he left the jail for the hospital, A.B. was supposedly "covered" in his own feces from "head to toe." (12/1 Tr. at 18.)

A.B.'s counsel moved to strike Flohr's testimony in its entirety, on the ground that his observations predated the State's present petition and were the subject of a prior commitment petition that the State filed on November 23 (and which was subsequently dismissed). (12/1 Tr. at 20–21.) The District Court overruled, saying, "Well, it's been within the last week," and the court would "give it the weight as it sees fit." (12/1 Tr. at 21.)

A.B. testified he believed the State's petition should be dismissed and he should not be committed to MSH. (12/1 Tr. at 51.) When asked about his familiarity with cold weather and ability to care for himself in it, A.B. responded he could take care of himself because he was a Bozeman native and "an Eskimo." (12/1 Tr. at 52.) Counsel asked A.B. if he understood the need to take medications for his mental health condition, and A.B. answered, "Yes, like fish oil." (12/1 Tr. at 52–53.) Counsel asked, "What about Ativan?" and A.B. responded, "Ativan, if necessary." (12/1 Tr. at 53.)

On cross-examination, the prosecutor asked A.B., "Do you think you have a mental disorder?" A.B. answered, "Yes, obsessive, compulsive disorder." (12/1 Tr. at 55.) When asked if he thought he needed treatment for that disorder, A.B. answered, "Yes." (12/1 Tr. at 55.)

At the conclusion of the hearing, the District Court discussed the criteria under Mont. Code Ann. § 53-21-126 for determining whether a respondent suffers from a mental disorder requiring commitment. (12/1 Tr. at 56–57.) The court then recounted in detail the testimony of each witness, including Logan's and Flohr's observations of A.B., Jones's and Maroney's evaluations, diagnoses, and recommendations, and A.B.'s testimony on his willingness to take medication. (12/1 Tr. at 57–65.)

After recounting the witness testimony, the court found "that the State has satisfied the burdens of proof that are relevant in this proceeding, and that a commitment to the State Hospital, for a period of 90 days, is appropriate, based on his inability to provide for his basic needs of food, clothing, health, or safety." (12/1 Tr. at 65.) The court also found an involuntary medication order was "appropriate in this case because [A.B.] doesn't have insight into his condition. He's not willing to

take his medications as properly prescribed. He doesn't even indicate to the Court that he will take his medications as requested, as he seems to equivocate on whether or not he'll take his medications." (12/1 Tr. at 65.) The court stated it lacked confidence A.B. would voluntarily take his medications. (12/1 Tr. at 65.)

The court issued a written commitment order (Doc. 77) and a separate filing titled, "Reasons Requiring Commitment" (Doc. 78). The commitment order specified that the "mental disorder" A.B. suffered from was Bipolar I. (Doc. 77 at 1.) The order also stated the court had "determined the least restrictive placement necessary to provide for the care and needs of the respondent was a commitment to the Montana State Hospital." (Doc. 77 at 1.) The order committed A.B. to MSH for up to 90 days, and it authorized the involuntary administration of medication. (Doc. 77 at 2.) The "Reasons Requiring Commitment" document merely restated the court's oral findings at the hearing. (Doc. 78.)

STANDARDS OF REVIEW

This Court reviews involuntary civil commitment orders "to determine whether the district court's findings of fact are clearly

erroneous and its conclusions of law are correct." *In re D.L.B.*, 2017 MT 106, ¶ 7, 387 Mont. 323, 394 P.3d 169. "Whether a district court's findings of fact satisfy statutory requirements is a question of law reviewed for correctness." *D.L.B.*, ¶ 7.

The Court "may review involuntary commitment proceedings for plain error, regardless of whether an objection was made" below. *In re N.A.*, 2013 MT 255, ¶ 12, 371 Mont. 531, 309 P.3d 27. The Court may "invoke plain error review where failing to review the claimed error may result in a manifest miscarriage of justice, may leave unsettled the question of the fundamental fairness of the trial or proceedings, or may compromise the integrity of the judicial process." *In re M.K.S.*, 2015 MT 146, ¶ 13, 379 Mont. 293, 350 P.3d 27 (citation and internal quotations omitted).

A district court's evidentiary rulings are reviewed for abuse of discretion. *In re L.S.*, 2009 MT 83, ¶ 18, 349 Mont. 518, 204 P.3d 707.

DISCUSSION

I. Undersigned counsel should be permitted to withdraw from the appeal.

In *Anders*, the United States Supreme Court stated that "if counsel finds his case to be wholly frivolous, after a conscientious

examination of it, he should so advise the court and request permission to withdraw." *Anders*, 386 U.S. at 744; *see also* § 46-8-103(2). Such a request must "be accompanied by a brief referring to anything in the record that might arguably support the appeal." *Anders*, 386 U.S. at 744; § 46-8-103(2).

The attorney must provide a copy of the brief to the client, and the client must have the opportunity "to raise any points that he chooses." *Anders*, 386 U.S. at 744; *see also* § 46-8-103(2). "[T]he court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous." *Anders*, 386 U.S. at 744.

Here, counsel is compelled by *Anders*, § 46-8-103(2), and his duty of candor to notify this Court that, after a review of the entire record and diligent research of the applicable statutes, case law, and rules, counsel has not identified any non-frivolous issues to appeal. Without arguing against his client, counsel submits this brief which discusses any issues that could arguably support an appeal.

II. The record might arguably support a claim that A.B. was never advised he had a right to a jury trial, and that this merits reversal.

The commitment statutes provide, "Whenever a person is involuntarily detained pursuant to 53-21-121 through 53-21-126, the person must at the time of detention be informed of the person's constitutional rights and the person's rights under this part." Mont. Code Ann. § 53-21-114(1). The State's initial petition must contain "a statement of the rights of the respondent." Mont. Code Ann. § 53-21-121(2)(h).

Under the Montana Constitution, "The right of trial by jury is secured to all and shall remain inviolate." Mont. Const. art. II, § 26. Montana statute provides, "At any time prior to the date set for hearing, the respondent, through counsel, may request a jury trial." Mont. Code Ann. § 53-21-125.

This Court has acknowledged that respondents indeed have a "right to a jury trial." *In re L.K.-S.*, 2011 MT 21, ¶ 16, 359 Mont. 191, 247 P.3d 1100 (reversing for an invalid waiver of the right to a jury trial, given that the respondent had explicitly requested one). This Court has also held it is critical that counsel for a respondent, "through

the course of interviewing the client, discuss and determine whether a jury trial should be pursued, pursuant to § 53-21-125, MCA." *In re K.G.F.*, 2001 MT 140, ¶ 80, 306 Mont. 1, 29 P.3d 485.

The State's petition contained a list of the respondent's rights, but this list did not include the right to a jury trial. (Doc. 71, Ex. B.) The list appears to mirror Mont. Code Ann. § 53-21-115, which provides, "In addition to any other rights that may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part," a respondent has twelve enumerated rights. The right to a jury trial is not included in this list. § 53-21-115. The State's petition, like the statute, stated the enumerated rights were "in addition to" any other constitutional or statutory rights the respondent may have. (Doc. 71, Ex. B.)

At the initial appearance, the District Court read A.B. his rights directly from the State's petition—again, this did not include the right to a jury trial. (11/29 Tr. at 8–10.) The record does not speak to whether A.B.'s counsel informed A.B. he could request a jury trial, or whether A.B. otherwise knew he could request one.

A.B. could argue he was never advised of his right to a jury trial and was unaware he had such a right. He could argue that had he been so advised, he would have requested a jury trial under § 53-21-125. A.B. could argue this Court should review this omission for plain error and reverse.

III. The record might arguably support a claim that the State violated the statutory requirement of hand-delivering notice of the petition to A.B.

Montana Code Annotated § 53-21-121(3) mandates that notice of a petition for commitment "must be *hand-delivered to the respondent* and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace." (Emphasis added.) The statute continues, "The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings." § 53-21-121(3).

This Court requires "strict adherence to our civil commitment statutes, given the utmost importance of the rights at stake in such proceedings, and the calamitous effect of a commitment, including loss of liberty and damage to a person's reputation." *In re B.H.*, 2018 MT 282, ¶ 18, 393 Mont. 352, 430 P.3d 1006 (citation and internal

quotations omitted). The Court has also stated it will not reverse an involuntary commitment order for a harmless or *de minimus* error. *In re O.R.B.*, 2008 MT 301, ¶ 30, 345 Mont. 516, 191 P.3d 482. The Court likewise has declined to reverse for plain error when "the asserted error did not impact the respondent's rights in a way that 'would leave unsettled the fundamental fairness of the proceedings, compromise the integrity of the judicial process, or create a manifest miscarriage of justice.'" *B.H.*, ¶ 20 (quoting *M.K.S.*, ¶ 24).

Here, there is no indication anyone "hand-delivered" notice of the State's petition to A.B. The record does not contain a certificate of service attached to the State's petition that would indicate how and to whom it was served. (*See* Doc. 71.) And at the start of the initial appearance, A.B.—who was at MSH and appearing by video—stated he had not yet had a chance to review the State's petition. (11/29 Tr. at 3.) His counsel explained she had spoken to A.B. "briefly on the phone" about the petition. (11/29 Tr. at 4.) The court then proceeded to summarize the substance of the petition for A.B. (11/29 Tr. at 4–10.)

A.B. could argue the requirements of § 53-21-121(3), concerning notice of the State's petition to the respondent, were not satisfied here.

He could argue this statutory violation demands reversal of his commitment order for plain error.

IV. The record might arguably support a claim that the District Court wrongly considered facts that predated the State's petition.

In determining whether to commit a respondent, "the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder" that requires commitment. Mont. Code Ann. § 53-21-126(1). "This statute specifically limits the presentation of evidence to that which is relevant to a particular respondent's condition." *In re T.M.*, 2004 MT 221, ¶ 18, 322 Mont. 394, 96 P.3d 1147. "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." M. R. Evid. 401.

A.B.'s counsel objected twice to the District Court's consideration of facts that occurred roughly a week prior to the State's most recent petition. (11/29 Tr. at 10–11; 12/1 Tr. at 20–21.) Specifically, A.B.'s counsel at the commitment hearing moved to strike Flohr's testimony about A.B.'s behavior at the detention center around November 21 and

22. (12/1 Tr. at 20–21.) The District Court overruled both objections. (11/29 Tr. at 11; 12/1 Tr. at 21.) The court then explicitly relied on Flohr's testimony in its findings of fact. (12/1 Tr. at 59–60; Doc. 78 at 4.)

A.B. could argue his behavior at the detention center on November 21 or 22 was irrelevant to the present proceedings, which began with A.B.'s hospitalization on November 28. He could argue the District Court abused its discretion by admitting this stale evidence and factoring it into its ruling.

V. The record might arguably support a claim that the District Court committed plain error by failing to hold a separate disposition hearing.

Montana Code Annotated § 53-21-127(2) provides, "If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days." A "hearing" is a "judicial session . . . held for the purpose of deciding issues of fact or of law." *Hearing, Black's Law Dictionary* (Bryan A. Garner, 11th ed. 2019). The lay definition of this word is "[an] opportunity to be heard, to present one's side of a case," or "a listening to arguments." *Hearing, Merriam-Webster Dictionary*,

https://www.merriam-webster.com/dictionary/hearing (accessed January 11, 2024).

The District Court did not hold a separate disposition hearing. Nor did it ask A.B.'s counsel or the prosecutor for recommendations or arguments concerning disposition. Instead, immediately after the close of testimony, the court pronounced its findings and ordered A.B.'s commitment to MSH. (12/1 Tr. at 57–65.)

In *In re S.L.*, 2014 MT 317, ¶ 39, 377 Mont. 223, 339 P.3d 73, this Court held, "Nothing in the plain language of the statute precludes the court from immediately proceeding to a disposition hearing after a finding that the respondent suffers from a mental disorder." The Court also reasoned in that case, "The record clearly supports the District Court's determination that MSH was the least restrictive placement alternative . . . Under these circumstances, a subsequent disposition hearing would have served no purpose." *S.L.*, ¶ 39.

A.B. could argue the District Court violated § 53-21-127(2) by not only failing to hold a separate disposition hearing, but also by failing to give A.B. an opportunity to be heard or to entertain arguments on A.B.'s disposition. Because his counsel did not object to the lack of a

disposition hearing or to A.B.'s placement at MSH in particular, A.B. could argue this violation demands plain error review.

VI. The record might arguably support a claim that the District Court issued inadequate findings of fact.

Montana Code Annotated § 53-21-127(8) mandates: "In ordering commitment pursuant to this section, the court shall make the following findings of fact." The statute then lists nine enumerated findings that a district court must make. § 53-21-127(8)(a)–(i). This includes, among other things, "the alternatives for treatment that were considered," "the alternatives available for treatment of the respondent," "the reason that any treatment alternatives were determined to be unsuitable for the respondent," and "if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives." § 53-21-127(8)(b), (c), (d), and (f); *In re D.S.*, 2005 MT 152, ¶ 21, 327 Mont. 391, 114 P.3d 264.

When a district court's findings of fact are insufficient, this Court may remand for more detailed findings. *D.L.B.*, ¶ 10; *D.S.*, ¶ 21. The Court has also held "that a trial court's failure to make a detailed statement of the facts may be harmless." *In re C.R.C.*, 2004 MT 389, ¶ 16, 325 Mont. 133, 104 P.3d 1065. In reviewing the adequacy of a

district court's findings, this Court considers the oral findings in addition to the written findings, so long as the written findings are at least "minimally sufficient." *In re S.M.*, 2014 MT 309, ¶¶ 27, 29, 377 Mont. 133, 339 P.3d 23.

In making its findings of fact, the District Court recounted Jones's testimony that she "considered less restrictive environments, but, based on [A.B.'s] condition, didn't find any less restrictive environment was available." (12/1 Tr. at 62; Doc. 78 at 7.) The court also discussed Maroney's testimony that "she didn't believe that simply releasing him to a less restrictive environment [ ] would be able to satisfy or protect" his basic needs. (12/1 Tr. at 64; Doc. 78 at 8.) The court recalled Maroney saying that "[l]ess restrictive placements were not available because he does not have insight to participate in outpatient treatment," and prior diversions had been unsuccessful. (12/1 Tr. at 64; Doc. 78 at 8–9.)

In its written commitment order, the court also found that "the least restrictive placement necessary to provide for the care and needs of the respondent was a commitment to the Montana State Hospital." (Doc. 77 at 1.) Other than this statement in the written order and the

court's summaries of what Jones and Maroney said, the court made no findings about what specific alternatives to MSH it considered and why it chose to forgo those. (*See* 12/1 Tr. at 57–65; Docs. 77, 78.)

A.B. could argue the District Court's findings of fact were insufficiently detailed, particularly on the question of potential alternatives to an MSH commitment. He could argue this violated § 53-21-127(8) and requires, at minimum, remand for more detailed findings of fact.

CONCLUSION

After conscientious examination of the record and thorough research of the applicable legal authorities, undersigned counsel has not identified any meritorious issues to appeal. If the Court agrees, it should grant counsel's motion to withdraw as direct appeal counsel. If the Court determines this case presents issues warranting an appeal, counsel asks that the Court issue an order identifying the appealable issues and permit counsel to proceed with briefing on those issues.

Respectfully submitted this 19th day of January, 2024.

OFFICE OF STATE PUBLIC
DEFENDER
APPELLATE DEFENDER DIVISION
P.O. Box 200147
Helena, MT 59620-0147

By: /s/ Michael Marchesini
MICHAEL MARCHESINI
Assistant Appellate Defender

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this *Anders* 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 5,051, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Michael Marchesini
MICHAEL MARCHESINI

APPENDIX

CERTIFICATE OF SERVICE

I, Michael Marchesini, hereby certify that I have served true and accurate copies of the foregoing Brief - Anders to the following on 01-19-2024:

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

Audrey S. Cromwell (Attorney)
1709 W College St
Ste 200
Bozeman MT 59715
Representing: State of Montana
Service Method: E-mail Delivery

Audrey S. Cromwell (Govt Attorney)
1709 W. College St.
Ste 200
Bozeman MT 59715
Service Method: eService
E-mail Address: Audrey.Cromwell@gallatin.mt.gov

A. B.
last known address
Service Method: Conventional

Electronically signed by Pamela S. Rossi on behalf of Michael Marchesini
Dated: 01-19-2024