IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0363

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSEPH EDWARD KNOWLES,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, the Honorable John W. Larson, Presiding

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INTRODUCTION

Joseph Knowles's appeal presents issues of first impression before this Court regarding this Court's evaluation of a district court's denial of a Criminally Convicted Youth's sentence reduction request pursuant to Mont. Code Ann. § 41-5-2501. Joseph was sentenced in 2017 for a crime committed when he was sixteen. Despite his efforts thereafter to enforce the CCYA on his sentence, Joseph became an afterthought and his case remained stagnant for years. When he finally obtained the statutorily required sentence review hearing at age 22, the district court too narrowly construed the Act, failed to adequately consider the evidence, and erroneously denied Joseph's reasonable request for a sentence reduction from sixty years in prison to sixty years with twenty suspended. The district court's order denying Joseph's sentence review is fraught with error and must be reversed.

STATEMENT OF THE ISSUE

Mont. Code Ann. §41-5-2501 requires a district court to reduce a criminally convicted youth's sentence if the youth has been substantially rehabilitated. Joseph worked to rehabilitate himself as much as possible given the prison setting but was hindered by the

length of his sentence and his inability to access treatment programs. The district court erred when it did not reduce Joseph's sentence so that he could become eligible for programs that would provide rehabilitation.

STATEMENT OF THE CASE

In 2016, Joseph was charged with deliberate homicide at age 16 after he stabbed Megan, a known drug dealer, during a fight that ensued after Joseph's girlfriend Brianna bought marijuana from Megan. (District Court Document (DC 76.) Brianna was 18, and the State charged her with robbery. (DC 76.)

Joseph accepted responsibility and pled guilty. (DC 78.1.) Joseph was 17 at the time he was sentenced. (DC 76.) The district court (The Honorable Judge Larson presiding) sentenced Joseph to 60 years to MSP. (DC 85. A copy of the original sentencing judgment, dated 12/28/17, is attached as Appendix (App.) A.) Brianna was sentenced to 40 years with 10 suspended. (4/5/22 Transcript (Tr.) p. 17.)

Joseph appealed. (DC 90.) The district court's original judgment failed to follow the Criminally Convicted Youth Act (Mont. Code Ann. § 41-5-2501). (DC 94; DC 109, Ex. A.) Through a stipulation with the State, this Court remanded Joseph's case to the district court for

amendment of the judgment to comply with the CCYA. (DC 94; DC 109, Ex. A.) This Court's remand order was issued on April 2, 2019 and ordered the district court to amend the judgment in several respects. (DC 94.) The Court ordered the district court to amend the judgment to reflect the court's jurisdiction over Joseph until age 21, to order the DOC to submit status reports to the district court every six months until Joseph turned 21 and ordered the district court to review Joseph's sentence before he turned 21. (DC 94.) The order further directed the district court clerk to provide a copy of the order to the DOC. (DC 94.) The district court clerk filed its copy of the order on April 3, 2019. (DC 94.) Joseph was nineteen years old at this time. (DC 76, 94.)

Despite this Court's Order, nothing happened in Joseph's case for almost three years. (DC 96.) On December 21, 2022, new defense counsel moved for a status hearing. (DC 97.) Based on the defense counsel's request, the district court attempted to comply with the Montana Supreme Court's order issued three years before. (DC 98.) The district court amended the judgment and ordered a single status report from the DOC. (DC 98, 99.) The district court held a sentence review hearing on April 5, 2022. (DC 104.) Joseph was 22 years old by

the time of the review hearing. (DC 103.) After the hearing, the district court cursorily denied Joseph's request for a sentence reduction. (DC 110. A copy of the "Order Denying Motion for Sentence Reduction" is attached as App. B.)

STATEMENT OF THE FACTS

On September 23, 2016 Joseph Knowles and his girlfriend, Brianna, met up with Megan, a known drug dealer, to buy marijuana. (DC 76.) Brianna and Megan got in a fight over the drugs. (DC 76.) While they were fighting, Megan pulled out a knife from a sheath and started to swing the knife at Brianna. (DC 76.) At this point, Joseph got out of the car and joined the fight. (DC 76.) Brianna gained control of the knife, while Joseph continued to punch Megan. (DC 76.) At some point Joseph grabbed the knife and stabbed Megan, resulting in Megan's death. (DC 76.)

For the offense of deliberate homicide, the district court sentenced seventeen-year-old Joseph to sixty years in prison. (App. A.) The Court found Joseph's rehabilitation prospects weak unless he worked on his chemical dependency, behavior, and anger issues. (App. A.) However,

the court did find Joseph would "respond relatively quickly to correctional rehabilitative treatment." (App. A.)

After Joseph appealed to this Court and this Court remanded the matter to the district court, in the three years while nothing happened, despite this Court's order following Joseph's appeal, Joseph was housed at MSP and at Crossroads in Shelby. (DC 103.) The DOC prepared no status reports because no order had yet been entered by the district court requiring it to do so. Neither the DOC nor the district court kept Joseph's case in mind with the upcoming sentence review hearing, as no order had been issued by the district court recognizing any of these provisions.

Joseph was monitored like any other adult offender. (DC 100.) Prior to the sentence review hearing, Joseph was housed on the high side at Crossroads. (4/5/22 Tr. p. 24.) He was on the high side primarily because of the nature of his sentence. (4/5/22 Tr. p. 24.) He could not get a job while on the high side. (4/5/22 Tr. p. 24.) He was on the wait list for a multitude of programs. (4/5/22 Tr. p. 25.)

When Joseph finally obtained a sentence review hearing, he had already turned twenty-two. (DC 103.) Joseph called two witnesses: his

unit manager, Cierra Sizemore, and his sister, Cheyenne Knowles. (4/5/22 Tr. pp. 23, 34.) Sizemore testified she has been Joseph's unit manager for more than a year and interacts with him daily. (4/5/22 Tr. pp. 26-27.) Sizemore explained Joseph's placement on the high side and that he is on the wait list for a multitude of programs. (4/5/22 Tr. pp. 24-26.) Sizemore testified that if Joseph becomes parole eligible sooner, then he will move up on the wait lists. (4/5/22 Tr. p. 26.) With his current sentence, Joseph will be at least in his thirties before he will be eligible for treatment programs. (4/5/22 Tr. p. 26.)

Sizemore explained Joseph's prison write-ups. (4/5/22 Tr. p. 27.) Joseph had nine write-ups over a five-year period. (DC 100.)[1] These write-ups were not surprising given his high side unit placing. (4/5/22 Tr. p. 27.) She described his last write-up, which had originally been labeled as fighting, had occurred when another inmate was horse-playing and pushed Joseph. (4/5/22 Tr. pp. 31-32.) Although it was the other inmate that initiated the contact, both inmates were given write-ups. (4/5/22 Tr. pp. 31-32.) She believes Joseph wants to be

[1] The DOC status report has ten write-ups listed. However, Joseph was found not guilty of one of these write-ups. DC 103.

rehabilitated and would work hard in the programs if given the opportunity. (4/5/22 Tr. p. 31.)

Joseph has access to a tablet for simple classes. (4/5/22 Tr. p. 28.) Joseph submitted several classes he did on the tablet such as a basic auto mechanic class. (DC 109, Ex. D.) Joseph's sister described the changes she has observed over the seven years since the commission of the offense. (4/5/22 Tr. pp. 37-38.) She reported Joseph's change in attitude toward education and treatment. (4/5/22 Tr. p. 37.) She confirmed if Joseph is given the opportunity, he wants to participate in treatment and programs and believes he currently has the attitude to succeed. (4/5/22 Tr. pp. 36-37.)

At the hearing, the State only called two witnesses: the original PSI author and the victim's mother. (4/5/22 Tr. pp. 9, 20.) The original PSI author had not met with Joseph and had not interviewed any prison officials. (4/5/22 Tr. pp. 11, 14.) He only reviewed Joseph's prison records and testified to Joseph's prison write-ups. (4/5/22 Tr. p. 14.) He also testified Joseph had not completed any treatment or programming. (4/5/22 Tr. p. 10.) The author admitted Joseph had no positive random drug tests. (4/5/22 Tr. p. 15.) He also admitted Joseph

had completed his HiSet (similar to a GED program) and had graduated. (4/5/22 Tr. p. 18.) The victim's mother did not support a sentence reduction but did want Joseph to get into rehabilitation programs. (4/5/22 Tr. pp. 20-21.)

Despite the court's failure to timely follow Mont. Code Ann. § 41-5-2502, the court eventually ordered the DOC to provide a status report. (DC 100.) The DOC status report listed Joseph's prison violations and reported Joseph was on the wait list for programs. (DC 100.) The individual who prepared the report did not testify. (DC 107.)

Joseph argued to be resentenced to 60 years with 20 years suspended. (DC 109.) In a three-page order, the court denied any sentence reduction, citing Joseph's write-ups and lack of program completions. (App. B.) The court recognized that Joseph was on the lists for programming but still found he "must demonstrate that his substantial rehabilitation prior to a sentence reduction." (App. B.) Despite Joseph graduating from the HiSet program, the court still found Joseph had not attempted to engage in the few services available to him. (App. B.)

STANDARD OF REVIEW

This Court reviews criminal sentences for legality. *State v. Keefe*, 2021 MT 8, ¶10, 403 Mont. 1, 478 P. 3d 830 *citing State v. Yang*, 2019 MT 266, ¶ 8, 397 Mont. 486, 452 P.3d 897; *State v. Talksabout*, 2017 MT 79, ¶8, 392 P. 3d 574, 387 Mont. 166. This Court reviews a claim that a sentence violates the constitution *de novo*. *Keefe*, ¶10 *citing State v. Tam Thanh Le*, 2017 MT 82, ¶ 7, 387 Mont. 224, 392 P.3d 607. This Court reviews the district court's findings of fact on which its sentence is based to determine whether they are clearly erroneous. *Keefe*, ¶10 (citations omitted). A finding is clearly erroneous if it is not supported by substantial evidence, if the district court misapprehended the effect of the evidence, or if this Court's review of the record convinces this Court that the district court made a mistake. *Talksabout*, ¶8 (citation omitted). This Court reviews *de novo* whether a district court violated a defendant's constitutional rights at sentencing. *Keefe*, ¶11 (citations omitted).

This Court reviews a district court's statutory interpretation of a statute *de novo*. *State v. Barrick*, 2015 MT 94, ¶13, 378 Mont. 441, 347 P. 3d 241. When a district court under a statutory grant of authority

makes a decision on the outcome of a case, this Court reviews that decision for an abuse of discretion. *Matter of Capser*, 2019 MT 215, ¶¶ 5-8, 397 Mont. 227, 448 P.3d 1084.

SUMMARY OF THE ARGUMENT

Joseph's case presents this Court with issues of first impression regarding this Court's evaluation of a district court's denial of Criminally Convicted Youth's sentence reduction request pursuant to Mont. Code Ann. §41-5-2501. The district court originally sentenced Joseph to sixty years in prison and urged him to avail himself to the programming offered at the prison. Joseph then became an afterthought. Despite this Court's remand order, Joseph's case remained stagnant until after he was twenty-two years old.

However, Joseph did what he could to make self-improvements. He behaved for his unit manager. He obtained his Hi-Set. He took tablet classes. Unfortunately, because of his lengthy sentence, he could not enter the rehabilitation programs recommended by the district court. Still, he signed up and got on waiting lists. As his unit manager testified, Joseph was motivated to be rehabilitated. He had a minimal

amount of write-ups, not unexpected given his prison placement on the high side.

Therefore, when the court finally provided him with an opportunity for a sentence review hearing, he argued for a sentence that would allow him the opportunity for the treatment he knew he needed. The district court's denial of Joseph's sentence reduction request, to a sentence of sixty years with twenty suspended, ignored the unrebutted evidence from his unit manager and the impossible position in which Joseph had been placed. The district court's order violated substantive due process, too narrowly construed the CCYA, and ignored the unrebutted evidence of Joseph's attempts to seek rehabilitation.

ARGUMENT

I. Mont. Code Ann. §41-5-2501 requires a district court to reduce a criminally convicted youth's sentence if the youth has been substantially rehabilitated. Joseph worked to rehabilitate himself as much as possible given the prison setting but was hindered by the length of his sentence and his inability to access treatment programs. Did the district court err when it did not reduce Joseph's sentence so that he could become eligible for programs that would provide rehabilitation?

A. Rehabilitation is the reason behind the Criminal Convicted Youth Act.

1. Juveniles must be treated differently at sentencing.

Joseph was just sixteen years old when an impulsive decision took the life of another teenager. Based on this split-second decision, Joseph was sentenced to prison for sixty years. This Court and the United States Supreme Court have recognized "juveniles are constitutionally different from adults in their level of culpability." *State v. Johnson*, 2023 MT 167, ¶21, 413 Mont. 202, 534 P. 3d 676 *quoting Keefe*, ¶21 *quoting Montgomery v. Louisiana*, 577 U.S. 190, 213,136 S. Ct. 718, 736, 193 L.Ed.2d 599 (2016). "Because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments." *Keefe,* ¶23, *quoting Miller v. Alabama*, 567 U.S. 460, 471, 132 S. Ct. 2455, 2464, 183 L. Ed. 2d 407 (2012) (Courts mandated to consider mitigation factors applicable to youth before a youth can be sentenced to life without parole for a homicide.)

This Court has acknowledged the "[g]rowing understanding of the psychology and brain development of young people has led the United States Supreme Court to acknowledge that the biological effects of youth include a 'lack of maturity and an underdeveloped sense of

responsibility' and demand special constitutional protections in criminal sentencing. *Keefe*, ¶39 (Chief Justice McGrath concurring and dissenting) *citing Roper v. Simmons*, 543 U.S. 551, 569, 125 S. Ct. 1183, 1195, 161 L.Ed.2d 1 (2005) (quotation omitted) (holding death penalty for juvenile offenders unconstitutional); *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 2026, 176 L.Ed.2d 825 (2010) (holding life without parole sentences for juvenile offenders in nonhomicide cases unconstitutional). This Court now recognizes "that juveniles are 'constitutionally different from adults for purposes of sentencing,' as they bear 'diminished culpability and greater prospects for reform.'" *Keefe*, ¶39 (Chief Justice McGrath concurring and dissenting) *quoting Miller*, 567 U.S. at 471, 132 S. Ct. at 2464 and *Montgomery*, 136 S. Ct. at 733. "[Y]ouths are constitutionally different from adults and, therefore, the characteristics of youth cannot be ignored during a youth's prosecution." *Johnson*, ¶22.

2. The Montana Constitution provides special constitutional considerations afforded to juveniles.

The Montana Constitution provides "[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental

rights of this Article *unless specifically precluded by laws which enhance the protection of such persons."* Mont. Const. Art. II, §15. (Emphasis added.) Therefore, Article II, Section 15, of the Montana Constitution specifically grants all fundamental rights enjoyed by adults to persons under age eighteen, but, moreover, encourages laws which enlarge the protections of youth. *Keefe*, ¶44 (Chief Justice McGrath concurring and dissenting). During the 1972 Constitutional Convention debate the discussion of Section 15 clearly emphasized the importance of protecting juveniles under the new Constitution. *Keefe*, ¶47 (Chief Justice McGrath concurring and dissenting). Delegate Monroe, the committee chair and sponsor of the provision, stated: "It seems to me that Montana can be the leader among all the states in recognizing the rights of people under the age of majority." Montana Constitutional Convention, Verbatim Transcript, March 8, 1972, Vol. V, p. 1750; *See also, Keefe*, ¶48 (Chief Justice McGrath concurring and dissenting).

In *Keefe* the Chief Justice argued the imposition of life without parole sentences for juveniles violates Mont. Const. Art. II, §15 and that the special constitutional status of adolescents needs to be recognized

by the criminal courts. *Keefe*, ¶¶49, 54 (Chief Justice McGrath concurring and dissenting). "Imposition of a punishment that denies an individual any hope of life outside prison walls is a case where the special status of minors demands the enhancement of their protection." *Keefe*, ¶49 (Chief Justice McGrath concurring and dissenting). As the Chief Justice explained, "[i]t is time to recognize that our Constitution has granted even greater protections in this regard." *Keefe*, ¶54 (Chief Justice McGrath concurring and dissenting).

3. The Criminally Convicted Youth Act's purpose is to ensure youths are provided rehabilitation and their status monitored by the court.

The Legislature, too, recognized the uniqueness of youth-even youth who have been criminally prosecuted in the district court system as adults- with the enactment of the Criminally Convicted Youth Act. The Criminal Convicted Youth Act's express purposes include protection of the public, holding youth accountable for their crimes, and providing "for the custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development of youth *convicted in district court*." *Talksabout*, ¶37 *citing* Mont. Code Ann. §41-5-2502 (3)(emphasis in original.) The Act further ties its "express

legislative purposes" to those set forth in the Youth Court Act at Mont. Code Ann. §41-5-102." *Talksabout*, ¶37. "[T]he Act does not just shuffle a youth off to the adult offender system and forget about his age." *Talksabout*, ¶37.

In sentencing a youth who has been charged and convicted in district court, the district court must (a) retain jurisdiction over the case until the criminally convicted youth reaches the age of 21; and (b) order the DOC to submit a status report every six months until the youth turns twenty-one. Mont. Code Ann. §41-5-2503(1)(b)-(c). A youth may request a hearing to review the youth's sentence at any time before the youth reaches the age of 21. Mont. Code Ann. §41-5-2510(1). After review of the evidence, the district court shall determine whether the criminally convicted youth has been substantially rehabilitated based upon a preponderance of the evidence. Mont. Code Ann. §41-5-2510(4). If the court determines a youth has been substantially rehabilitated, the court can (a) suspend the remaining portion of the sentence, impose conditions, and place the youth on probation; (b) impose all or part of the remaining sentence with additional recommendations to the

department regarding treatment of the criminally convicted youth; or (c) a combination of options. Mont. Code Ann. §41-5-2510(5).

B. The State has violated Joseph's substantiative due process rights because Mont. Code. Ann. §41-5-2501 requires substantial rehabilitation before a youth's sentence can be reduced, but the State has provided no means for Joseph to obtain substantial rehabilitation.

At sixteen-years-old, at the time of the offense, the court sentenced Joseph to sixty years in prison with the recommendation that he complete programs aimed at rehabilitation. (App. A.) The irony though is that all the programs are controlled by the Department of Corrections, and Joseph is not eligible to begin the programs until he is in his thirties. As this Court and social science researchers have acknowledged, the youth brain is most susceptible to rehabilitation during a person's teenage and early twenties. "'[S]ubstantial psychological maturation takes place in middle and late adolescence and even into early adulthood.'" *State v. Null*, 836 N.W. 2d 41 (Iowa 2013) (Iowa Supreme Court holding a sentence of 52.5 years, without parole eligibility, for a juvenile, is equivalent to a life sentence) (citation omitted). "Given the juvenile's greater capacity for growth and reform, it is likely a juvenile can rehabilitate faster if give the appropriate

opportunity" *State v. Lyle*, 854 N. W. 2d 378, 400 (Iowa 2014) (Iowa Supreme Court holding that mandatory minimum sentences of imprisonment for youthful offenders are unconstitutional). Yet, no programs are available in the prison for Joseph during this critical brain developmental period.

Joseph has tried to be accountable and seek rehabilitation. He pled guilty and did not seek to shift responsibility to his adult co-defendant. (DC 78.1.) Then, on direct appeal, he sought relief that would get him a sentence review hearing so that he could get into programs. (DC 109, Ex. A.) His case languished for over three years. (DC 97.) He requested programming and nobody acted on his requests. (DC 25.) At his eventual sentence review hearing his requested relief was a reduction in his in-custody time so that he would become eligible for programming sooner. (DC 109.)

However, the sentence review court denied him relief because he had not been "rehabilitated" to the court's satisfaction. (App. B.) The district court defined rehabilitation in Joseph's case as the completion of programs that he is not currently eligible for. Despite Joseph's

attempts, the judicial system has made it impossible for him to receive rehabilitation during these critical years of his development.

"The law never requires impossibilities." Mont. Code Ann. §1-3-222. This Court has recognized it is fundamentally unfair to place a person in an impossible situation to secure liberty. For example, in *MacPheat v. Mahoney*, 2000 MT 46, 299 Mont. 46, 997 P. 2d 753, this Court held if a criminal defendant, for no other reason than his indigency, is unable to secure his pre-sentence freedom by posting bail, then he is entitled, under due process and equal protection, to good-time credit for the time he spends in the court detention facility. This Court recognized the fundamental unfairness of requiring a defendant to perform an impossibility, "[t]o deprive a probationer his conditional freedom simply because, through no fault of his own, he was unable to pay a fine or restitution, 'would be contrary to the fundamental fairness required by the Fourteenth Amendment.'" *MacPheat*, ¶12 *quoting Bearden v. Georgia*, 461 U.S. 660, 672-673, 103 S. Ct. 2064, 2073, 76 L. Ed. 2d 221 (1983) (unconstitutional to revoke a defendant's probation solely on his inability to pay restitution.) *See also, Fouts v. Montana Eighth Judicial District Court,* 2022 MT 9, ¶9, 407 Mont. 166, 502 P. 3d

689 (State could not be held in contempt for failing to provide mental health services when the funding for the services was unavailable. "Courts may not adjudge a defendant in contempt for not doing an impossibility. …")

Courts also cannot lengthen a defendant's sentence to promote rehabilitation. *Tapia v. United Staes*, 564 U.S. 319, 131 S. Ct. 2382, 180 L. Ed. 357 (2011). In *Tapia*, the district court selected the length of the sentence to ensure that the defendant would complete a 500-hour drug treatment program. *Tapia*, 564 U.S. at 334, 131 S. Ct. at 2393. In reaching its conclusion, the Court recognized that control over treatment programs and a defendant's ability to participate in treatment programs rests in the hands of the prisons and outside the control of a defendant or the sentencing court. *Tapia*, 564 U.S. at 331, 131 S. Ct. at 2390.

In other instances, courts have held the State violated substantive due process when requiring compliance despite it being impossible. For example, in *Planned Parenthood Great Northwest v. Kentucky,* 599 F. Supp. 3d 497, 502-505 (W.D. Kentucky 2022), the Court held a new statute violated the Fourteenth Amendment, substantive Due Process,

when it required abortion providers to use agency forms and processes but then did not provide the forms.

Here, despite Joseph's efforts, the district court denied Joseph sentence review relief based on his failure to complete the impossible. The district court determined Joseph had not been substantially rehabilitated based on the failure to complete programs. (App. B.) Joseph signed up for the programs offered by the prison and is on the wait lists. (4/5/22 Tr. p. 25.) He cannot move up the wait list sooner due to the length of his sentence. As his unit manager explained, "[s]o, it's going to be, probably a very long time before he sees any of these programs and it's not anything that he's done; it's just the way it works." (Tr. at 25.)

Joseph requested the district court provide the one aspect that could increase his opportunity to get into these programs sooner – a slightly reduced custodial sentence. (DC 109.) However, the district court denied that request based on the circular reasoning that Joseph had not completed these programs. In imposing such an impossibility and denying Joseph sentence review based largely on that impossibility, the State violated Joseph's substantive due process rights.

C. Joseph was substantially rehabilitated for the relief he requested.

Notwithstanding Joseph's nine write-ups ups in a five-year period, his behavior had drastically improved from when he was incarcerated prior to being sentenced. (DC 76, 100.) During the year and a half Joseph was incarcerated prior to being sentenced, he had eight write-ups, with some behavior as severe as threats toward detention officers and knocking over a workout machine. (DC 76.) In contrast, after being sentenced, for the last five years of his incarceration Joseph has only received nine write-ups. (DC 100.) His unit manager described the write-ups as minor, given how easily an inmate can be written up. (4/5/22 Tr. p. 27.)

Additionally, despite Joseph's limitations in the programs he could take, he took advantage of the minimal programming available to him. For example, he obtained his HiSet and took a number of self-paced tablet classes. (4/5/22 Tr. p. 27; DC 109, Ex. D.)

As such, Joseph conditioned the relief he requested at the sentence review hearing as proportional to the progress he had made. Joseph did not ask to be immediately released from prison. Nor did Joseph request a reduction in the number of years in his sentence. (DC

109.) Rather, Joseph, who had already been incarcerated for seven years, only requested a reduction in his amount of custodial time, so that he would be eligible for programming and could obtain more rehabilitation. (DC 109.) The evidence presented by Joseph demonstrated he had been rehabilitated enough to warrant a slight decrease so that he could continue to proceed with more programming. As the Court recognized in *Null*, "[t]he prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a 'meaningful opportunity to demonstrate 'maturity and rehabilitation. .. . ." *Null*. 836 N.W. 2d at 71 *citing Graham*, 560 U.S. 48, 130 S. Ct. at 2030.

D. The district court failed to objectively consider the evidence presented at the hearing.

1. The only unbiased witness to testify at Joseph's hearing was his unit manager.

Joseph called his unit manager, Cierra Sizemore, as a witness on his behalf at his sentence review hearing. (4/5/22 Tr. p. 23.) Sizemore is a unit manager in the "high side" portion of Crossroads. (4/5/22 Tr. p. 24.) Joseph is placed on the "high side" primarily because of his crime and the length of his sentence. (4/5/22 Tr. p. 24.) Sizemore testified

she had been Joseph's case manager for approximately a year and interacts with him daily. (4/5/22 Tr. p. 26) She has not had issues with supervising Joseph. (4/5/22 Tr. p. 27.)

Sizemore testified Joseph completed HiSet (high school equivalency). (4/5/22 Tr. p. 27.) She confirmed that Joseph is on the waitlist for a multitude of programs, but because of the waitlist backlog he will be in his thirties before he can start any of the programs. (4/5/22 Tr. pp. 25-26.) Although he has access to a tablet, all his needed programming is on the waitlist. (4/5/22 Tr. p. 26.) She explained if Joseph were to be parole eligible sooner, he would move up the waitlist and could get into programs quicker. (4/5/22 Tr. p. 26.) Based on her daily interactions with Joseph, she testified he would do well in rehabilitation programs and would take advantage of the opportunities. (4/5/22 Tr. p.27.) However, under the current sentence, Joseph has approximately eight more years to even be considered for parole eligibility.

Although Sizemore was called as a witness by Joseph, she is a DOC employee. (4/5/22 Tr. p. 22.) She is also the only witness that has daily interactions with Joseph, first-hand knowledge of Joseph's

relations with other supervisors and other inmates, and daily observations of his attitude and aptitude for change. (4/5/22 Tr. p. 26.) Sizemore testified, based on her knowledge and daily observations of Joseph, that he was motivated to be rehabilitated if he could get into state programming. (4/5/22 Tr. pp. 27, 31.) Sizemore had no personal history with Joseph or his case as her only involvement was his assigned DOC unit manager. The district court abused its discretion when it failed to adequately weigh and recognize Sizemore's unbiased testimony.

2. The State offered no witnesses with any detailed or personal knowledge of Joseph.

The State called the original PSI author, Tim Hides, as its witness. (4/5/22 Tr. p. 9; DC 76.) Hides' only involvement was to review Joseph's prison records from MSP. (4/5/22 Tr. p. 14.) Hides had not even reviewed Joseph's status reports from Crossroads, where he was housed at the time of the hearing. (4/5/22 Tr. p. 18) Hides did not interview any DOC officials, such as Sizemore, that had actual contact with Joseph. (4/5/22 Tr. p. 14.) Nor did Hides interview Joseph in preparation for his updated PSI and hearing. (4/5/22 Tr. p.11.) In fact, Hides admitted he has never met Joseph. (4/5/22 Tr. p.13.)

The only other witness called by the state was the victim's mother. Understandably, she did not want Joseph's sentence reduced. (4/5/22 Tr. p. 20.) However, she did admit she wants him rehabilitated when he is released from prison. (4/5/22 Tr. p. 21.)

The State offered Joseph's prison discipline record through Hides. (DC 103.) However, contrary to Sizemore's testimony, the State solicited no testimony to interpret the significance of the discipline record and offered no testimony from any person with direct contact with Joseph.

3. The district court failed to properly weigh the evidence presented at the sentence review hearing.

At Joseph's original sentencing hearing, the Court stated the reason it sentenced Joseph to sixty years in prison was the court wanted Joseph to have an opportunity for rehabilitation. (App. A.) The court told Joseph, "You have a chance to take advantage of lots of situations in the prison, lots of educational opportunities, lots of vocational opportunities, lots of counseling opportunities." (12/19/17 Tr. p. 149.) The court further made a finding that Joseph's prospect for

rehabilitation was not good unless he completed the programs. (DC 85, p. 5.)

Yet, contrary to the court's proclamation during the original sentencing hearing, the prison did not provide Joseph with "lots of opportunities." As Sizemore testified, Joseph had attempted to avail himself to programs and has gotten himself on the necessary waitlists. (4/5/22 Tr. p. 25.) However, given the length of his sentence, he will not be eligible for the programs the court exalted until he is in his thirties. (4/5/22 Tr. p. 26.) Therefore, Joseph's request for resentencing to a custodial sentence in which he can begin the programming described by the court was reasonable, given the court's misunderstanding of the timing of programming within the prison.

Besides the court's misunderstanding of how prison programming works, the court was careless in its understanding of youth court law and its case management. In its original sentence, the court failed to follow the Criminally Convicted Youth Act (Mont. Code Ann. § 41-5-2501). (DC 109, Ex. A.) Then, once this Court issued its remand order, the court failed to follow this Court's order and allowed Joseph's case to languish with no action until defense counsel forced the court to act.

(DC 97.) Although Joseph's case, given his youthful status, should have been prioritized, the treatment and gaffes by the district court and clerk demonstrate Joseph was an afterthought, in which the court was willing to dispose of as simply as possible.

In *Keefe*, this Court reviewed a re-sentencing hearing which was conducted pursuant to *Miller*. The district court ignored the unrebutted testimony of the court appointed psychologist and of the former warden. *Keefe*, ¶64 (Justice Sandefur concurring and dissenting). As Justice Sandefur recognized, "the District Court arbitrarily discredited and dismissed the unrebutted contrary evidence unambiguously on the merits, without any record justification or basis for discrediting its veracity, credibility or weight." *Keefe*, ¶65 (Justice Sandefur concurring and dissenting).

More recently, in *Johnson*, although a transfer hearing proceeding and not a sentence review hearing, this Court found the district court abused its discretion when it reached its decision based on the egregious facts of the offense and failed to fully consider evidence presented by the defendant. *Johnson*, ¶¶25, 28. This Court held that by failing to consider the defendant's unrebutted evidence, such as testimony offered

by the psychosexual evaluator regarding Johnson's amenability to treatment, the district court abused its discretion. *Johnson*, ¶28.

Here, Joseph offered undisputed evidence that he has made self-improvements, such as completing his HiSet. (4/5/22 Tr. pp. 18, 27.) He also signed up for the programming suggested by the district court at his original sentencing hearing. (4/5/22 Tr. p. 25.) It is also undisputed that Joseph cannot get into these programs until he is in his thirties. (4/5/22 Tr. p. 26.) Further, the only witness to testify at the hearing that had daily and close interactions with Joseph was his unit manager, Sizemore. (4/5/22 Tr. pp. 23, 26.) Sizemore testified she has had no issues with supervision of Joseph, and he is motivated to be rehabilitated. (4/5/22 Tr. pp. 27, 31.) The State offered no witness to counter Sizemore's undisputed testimony.

The district court sentenced Joseph to a sixty-year custodial sentence and required Joseph to complete rehabilitation programming. (App. A.) However, because of the length of his sentence, Joseph can only sign up for and get on a wait list for the programs. In doing what he could, Joseph signed up for the programs. (4/5/22 Tr. p. 26.) Nonetheless, the district court faulted Joseph at the sentence review

hearing for not being substantially rehabilitated. (App. B.) Joseph requested a reasonable reduction in the custodial portion of his sentence so he could be eligible for programs. (DC 109.) The district court failed to adequately consider Sizemore's testimony and erred when it denied Joseph's sentence reduction request.

CONCLUSION

Joseph Knowles respectfully requests this Court resentence him to a sentence of sixty years in prison with twenty suspended. In the alternative, he requests that this Court remand with instructions to impose a sentence of the same.

Respectfully submitted this 18th day of March, 2024.

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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 5,818, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Kristina L. Neal
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APPENDIX

CERTIFICATE OF SERVICE

I, Kristina L. Neal, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-18-2024:

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