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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0160

IN THE SUPREME COURT OF THE STATE OF THE STATE OF MONTANA

No. DA-00160

NATHAN HARDIN,

Petitioner and Appellant

v.

STATE OF MONTANA,

Respondent and Appellee

FILED

APR - 9 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

BRIEF OF APPELLANT

On appeal from the Montana Third Judicial Court of Powell County

The Honorable Ray Dayton, Presiding

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STATEMENT OF ISSUES

Issue one: In the Powell County District Court, where it was at the Judge's discretion to rule on whether petitioner had meet the requirements for removal from the registry. Did the District Court err or abuse its discretion in making a decision based on law?

Issue two: Did the District Court of Powell County, give Petitioner ample opportunity to the right to a hearing, to give further arguments.

Issue three: Did the District court make findings in its judgment, on facts, or did it disregard arguments that were addressed in petitioners petition for removal from the registry.

STATEMENT OF THE CASE

Nathan Hardin, while incarcerated in Montana State Prison, petitioned the local District Court for removal from the sex offender registry based upon believing he had meet the requirements. Nathan Hardin cited different statues

from Colorado and Montana and addressed the Powell County District Court on how Colorado handles petition for removals, and asked the Powell County Court to hold a hearing for further arguments, while citing different case laws and claiming that his rights were being violated by retro-active application of Montana's requirements set forth in the sex offender registry. Nathan Hardin argued that Law abiding as said in the statute should be interpreted as not having any other sex offenses.

Nathan Hardin has served his misdemeanor sex offense sentence from Colorado, and provided the court with a copy of that judgement. In that judgement it states that Nathan Hardin's status as a sex offender from Colorado was deemed nonviolent and non-predatorily.

Nathan Hardin argued that it had been 10 years and he hadn't been convicted of another Sex offenses and that he should be removed from the requirement in Montana to register.

The Powell County Prosecutor for the state argued that since Nathan Hardin was incarcerated for the last three years on a charge out of Missoula County and because while incarcerated one is not required to register. Nathan Hardin did not complete his 10-year registration period.

The judge initially denied Nathan Hardin's petition without holding a hearing, and Stated that he was unclear whether Nathan Hardin had meet the requirements for removal.

STATEMENT OF FACTS

Nathan Hardin, the appellant herein, respectfully submits this Statement of Facts in support of his appeal from the decision rendered by the Powell County Court, which denied his petition for relief from the sex offender registry requirements imposed upon him subsequent to his relocation to Montana. This appeal centers around significant concerns of equal protection, ex post facto violation, and procedural fairness.

Ten years ago, Mr. Hardin was convicted of a non-violent, non-predatory misdemeanor offense in the State of Colorado. Under Colorado law, individuals convicted of such misdemeanors are not deemed a threat to the community and are therefore not required to have their information disseminated online via a public registry. Mr. Hardin's rights, however, have been severely compromised

upon his move to Montana, where the registry requirements are not only more punitive but have also subjected him to various forms of societal and economic hardships. These include difficulties in securing housing and employment, public threats, and unnecessary police stops based on false reports triggered by his online registry information.

In anticipation of fulfilling the ten-year requirement specified by Colorado law for removal from the registry—a milestone not negated by periods of incarceration—Mr. Hardin proactively petitioned for removal before the ten-year mark, fully expecting administrative delays. When the judgment on his petition was finally issued, it was past the ten-year mark, rendering any argument against his timing moot. Despite this, the court not only denied his petition but also failed to grant him a requested hearing, where he intended to further argue his case, including presenting arguments related to *State v. Hinman* 2023 MT 116., which he believed supported his position against the retroactive application of Montana's more punitive requirements.

Mr. Hardin's arguments further highlighted the disparity in treatment for the same misdemeanor offense between Colorado and Montana, pointing out that had his offense been adjudicated in Montana, he would not have been subject to

registry requirements. This inconsistency raises serious equal protection concerns, especially since Mr. Hardin has remained law-abiding, with no subsequent sexual offenses, thereby aligning with Colorado's interpretation of compliance.

The Powell County prosecutor's opposition, focused narrowly on the assertion that Mr. Hardin's last three years of incarceration should not count towards the ten-year requirement—despite Montana's policy of not requiring registry for incarcerated individuals—overshadows the broader injustice and the denial of Mr. Hardin's petition. It is particularly troubling given the court's admission of uncertainty regarding whether Mr. Hardin had indeed met the ten-year requirement, yet still opting to deny his petition without allowing a hearing to clarify these crucial details.

Enclosed with this appeal, for the Court's convenience, is a copy of the pertinent Colorado legislation, enabling a direct comparison with Montana statutes to further elucidate the disparities and support Mr. Hardin's case for relief.

Summary of argument

This appeal arises from a series of critical errors by the district court, which fundamentally compromised the fairness and thoroughness of the proceedings below. Primarily, the district court erred by neglecting to adequately investigate and understand pertinent case law regarding the ten-year requirement central to this case. Instead of seeking clarity on this legal requirement, the court admitted to its own uncertainty and proceeded to issue a judgment without resolving this ambiguity. Such an approach not only deviates from the judicial duty to apply the law with precision but also sets a concerning precedent for the adjudication of similar cases.

Moreover, the refusal to hold a hearing for oral arguments, particularly in a situation that demanded nuanced understanding of a pro se litigant's position, further exemplifies the court's failure to engage with the case in a manner that ensures a fair and just outcome. Oral arguments could have significantly contributed to the court's understanding of the issues at hand, especially in interpreting the litigant's arguments in light of *State v. Hinman* 2023 MT 116., *Millard v. Camper* (HN6), and the invoked equal protection challenges.

Additionally, the district court's oversight in not addressing crucial arguments related to the restoration of rights post-sentence, and its disregard for significant precedents such as *State v. Sedler*, 2020 MT 248, Mont. Code. Ann 46-23-506(2a) and (3a) where the Supreme Court found, registration requirements facially unconstitutional in regards to law abiding, signals a departure from established legal standards and the principles of equal protection under the law.

In sum, the district court's judgment was marred by a lack of diligence in legal inquiry, a disregard for the value of oral arguments, and an omission of critical legal and constitutional considerations. This appeal seeks not only to rectify the errors of the proceedings below but also to reaffirm the judiciary's commitment to thorough and informed decision-making, ensuring that every litigant's arguments are heard and appropriately weighed against the backdrop of relevant law and precedent.

This summary argument aims to encapsulate the primary legal failures of the district court, positioning the appellate court to remedy these missteps and uphold the principles of justice and legal accuracy.

Argument

INTRODUCTION

This appeal concerns the constitutional challenge against the sex offender registration petitioning process as outlined in Montana Code Annotated §§ 46-23-506(2a) and (3)(a). The crux of this challenge lies in the assertion that the requirement for offenders to petition for the cessation of registration obligations, even after serving the mandated registration period of ten years, constitutes a violation of substantive due process rights. Furthermore, this requirement unnecessarily perpetuates the punitive consequences of the offender's original conviction, thereby infringing upon their right to a full restoration of rights as guaranteed by the Constitution.

Argument

I. The Petitioning Process Imposes an Unconstitutional Burden Post-Sentence

The Montana Supreme Court, in *State v. Sedler*, 2020 MT 248, unequivocally held that the provisions of MCA §§ 46-23-506(2a) and (3)(a) were facially unconstitutional. The Court recognized that the imposition of an additional procedural burden on offenders, who have already completed their sentence and the statutorily mandated registration period, serves no legitimate public safety interest and instead functions as an undue probationary condition. This ruling aligns with the principle that the law should not impose indefinite penalties or restrictions on individuals who have fulfilled their debt to society as per the sentencing terms.

II. The Recent Legislative Amendments Fail to Address the Constitutional Infractions

Despite the Supreme Court's ruling, recent amendments to the contested statutes, which now condition the cessation of registration requirements on maintaining a "clean record" rather than simply being "law-abiding," fail to rectify the constitutional violations identified. This semantic change does not substantively alter the burdensome and punitive nature of the petitioning process. It remains an unnecessary and excessive obligation that infringes upon the rights of individuals to reintegrate into society fully and without undue governmental interference, thus warranting this Court's intervention to declare these amendments facially unconstitutional as well.

III. The District Court's Failure to Conduct a Hearing Denied the Appellant Due Process

The District Court's decision to deny a hearing on the matter further exacerbated the denial of the appellant's rights. The hearing was the appropriate forum for addressing the constitutional challenges to the legislation and for arguing the specific interpretation of "law-abiding" as it pertains to the appellant's circumstances. The refusal to hold such a hearing deprived the appellant of the

opportunity to fully present their case, thereby violating their right to due process.

IV. The Application of the Registration Requirement Constitutes an Ex Post Facto

Violation

Imposing the extended registration requirement on the appellant, who was convicted of a misdemeanor offense ten years' prior, constitutes an ex post facto law application. Such retrospective application of law that aggravates the legal consequences of acts committed before its enactment violates fundamental constitutional protections against ex post facto laws. Moreover, it infringes upon the appellant's right to due process and the full restoration of rights post-sentence, as guaranteed by the Constitution.

I would ask this court to address this issue as a facial argument and as an as applied challenge in my particular case.

The requirement for sex offenders to petition for the cessation of registration obligations, as mandated by the contested statutes, imposes an unconstitutional burden on individuals who have already served their sentence and the prescribed registration period. This Court should thus affirm the principles of justice and constitutional law by ruling that the recent legislative amendments to MCA §§ 46-23-506(2a) and (3)(a) are facially unconstitutional, thereby vindicating the appellant's right to due process and the full restoration of rights.

The core issue in this appeal is whether the imposition of Montana's registration requirements on Nathan Bryce Hardin, who has fully served a sentence for an offense in Colorado, constitutes a violation of his restoration rights under Article II, Section 28(2) of the Montana Constitution and his right to due process. This brief argues that such imposition is indeed a violation, drawing on the constitutional guarantee of full rights restoration upon termination of state supervision, statutory interpretations, and relevant case law, notably *State v. Hinman*, 2023 MT 116.

I. MONTANA'S CONSTITUTIONAL AND STATUTORY GUARANTEES FOR RESTORATION OF RIGHTS

Article II, Section 28(2), of the Montana Constitution unequivocally guarantees that full rights are restored by termination of state supervision for any offense against the state.” This foundational principle is further codified in § 46-18-801(2), MCA, underscoring Montana’s commitment to the full restoration of rights once an individual has served their sentence. This legal framework establishes the expectation that upon completion of their sentence, individuals will reintegrate into society without the imposition of additional, state-specific punitive measures that were not part of their original sentencing.

II. DISPARITY BETWEEN COLORADO'S AND MONTANA'S REGISTRATION REQUIREMENTS

Nathan Hardin has fulfilled all the obligations of his sentence in the State of Colorado, a jurisdiction with distinct registration requirements that are not considered punitive. The imposition of Montana's registration requirements on Nathan Hardin—requirements that are notably absent in Colorado and do not align with the conditions of his original sentencing—constitutes an additional, punitive measure that infringes upon his constitutionally and statutorily guaranteed rights to full restoration.

III. THE CASE OF STATE V. HINMAN AS PRECEDENT

The Supreme Court of Montana in *State v. Hinman*, 2023 MT 116, issued a ruling that strongly opposed the state's creation of registration requirements that negatively impact offenders in a manner akin to Nathan Hardin. The *Hinman* decision underscores the principle that post-sentencing impositions, which substantially affect an individual's rights and liberties, must be scrutinized against constitutional guarantees.

IV. VIOLATION OF DUE PROCESS AND RESTORATION RIGHTS

The application of Montana's registration requirements to Nathan Hardin not only fails to recognize the full-restoration of his rights upon completion of his Colorado sentence but also violates his right to due process. The extension of punitive measures, not originally part of his sentencing and based solely on his relocation to Montana, is a deprivation of rights without sufficient legal basis and justification. This action disregards the principle that punitive measures should be clear at the time of sentencing, a tenet essential to the fairness and predictability of the legal system.

Based on the foregoing arguments, Nathan Hardin respectfully requests that this Court recognize the imposition of Montana's registration requirements as a violation of his constitutionally and statutorily guaranteed restoration rights and his right to due process. Furthermore, Nathan Hardin urges the Court to find such imposition as not warranted under the principles established by Article II, Section 28(2) of the Montana Constitution, § 46-18-801(2), MCA, and the precedent set in *State v. Hinman*, 2023 MT 116. Accordingly, Hardin seeks relief from the

application of these registration requirements, aligning with Montana's commitment to the full and fair restoration of rights.

This appeal arises from the judgment of the Powell County District Court, wherein the appellant contends with the application of the Montana 10-year registration requirement for sex offenders. The crux of this appeal rests on the interpretation of Montana law concerning the fulfillment of the sex offender registry requirement, particularly under circumstances that involve incarceration post the initial offense and the registration requirement for offenses considered misdemeanors in other jurisdictions.

1. Ambiguity in Montana's Legislative Law Regarding Incarceration Time

First and foremost, the appellant brings to attention the ambiguity in Montana's legislative statutes regarding whether time spent incarcerated on charges unrelated to the original offense for which the sex offender registration was required counts towards fulfilling the 10-year registration requirement. The absence of explicit legislative language addressing this scenario has led to a

misinterpretation that undermines the appellant's rights. As the trial judge himself noted uncertainty about whether the appellant has met the registration requirement, this ambiguity underscores a need for appellate clarification to ensure just application of the law. "See judgement from Record"

It is the appellant's position that in the absence of clear statutory language to the contrary, all time subsequent to the conviction should count towards fulfilling the registration requirement, irrespective of the nature of subsequent incarcerations. To rule otherwise would be to impose additional, undeclared penalties on individuals based on events that Montana's legislature has not deemed relevant to the registration timeline.

2. Equal Protection Clause Violation

The appellant also raises a critical issue regarding the violation of the Equal Protection Clause. Given that the charge in Colorado, for which the appellant was convicted and required to register as a sex offender, is classified as a misdemeanor—a classification that, under Montana law, would not require registration—Montana's application of its registration requirements to the

appellant represents a discriminatory and punitive measure, disproportionately impacting the appellant based on geographic and jurisdictional discrepancies.

This differential treatment lacks a rational basis, especially when considering the nature of the offense and its classification in the jurisdiction of conviction. The imposition of Montana's registration requirements on an individual convicted of an offense in another state, which Montana law would not deem registrable if committed within its jurisdiction, violates the principle of equal protection under the law. Furthermore, this treatment mirrors the issues raised in the State vs. Hinman case, where measures deemed overly punitive and not aligned with the original legislative intent were struck down.

3. Retroactivity and Increased Punitiveness

Lastly, the appellant contends that the application of Montana's sex offender registration laws in his case has been both retroactive and unduly punitive, infringing upon his due process rights. The legislative intent behind the registration requirement was not to impose additional punishment but to serve as a public safety measure. The appellant's treatment, akin to being placed back

under supervision via these registration requirements, contradicts the rehabilitative aim and exceeds the punitive measures deemed appropriate at the time of the original sentencing.

Argument: In light of the precedent set by this court in State vs. Hinman, which acknowledged the impermissibility of applying more punitive measures retroactively, the appellant urges this court to recognize the disproportionate and unjust application of Montana's sex offender registration laws in his case as a violation of his due process rights.

Conclusion

In conclusion, the appellant respectfully requests that this court reverse the lower court's decision and recognize the completion of the 10-year registration requirement, taking into account the time served in incarceration for unrelated charges, and acknowledge the violation of the Equal Protection Clause and due process rights in the application of Montana's sex offender registration laws to his

case. The principles of justice and equity, alongside legislative intent and constitutional rights, demand a ruling in favor of Nathan Bryce Hardin.

A handwritten signature in black ink that reads "Nathan Hardin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Certificate of compliance

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with the proportionately spaced Century School Book 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 2,912 words, excluding table of contents, table of authorities, certificate of service, certificate of compliance, and appendices.

Appendix

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Colo. Rev. Stat. § 16-22-111 Internet posting of sex offenders –procedure....App. B

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CERTIFICATE OF SERVICE

I certify that I filed this

☐ Petition

☐ Motion

☒ Other Opening Brief
[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Attorney General - Austin Knudsen
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DATED this 9th day of April, 2024

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[Print name]

