IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0142

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CHEYENE LEILANI – AMBER ZIELIE,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, the Honorable David Grubich, Presiding

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1. Pursuant to a motion by the State, in the interest of justice, the district court dismissed, with prejudice, the case against Ms. Zielie. An order of dismissal in a criminal case is a final judgment. Therefore, the district court lacked jurisdiction to re-open the case and proceed with a subsequent probation violation.

2. Alternatively, Ms. Zielie is entitled to 66 days credit for time served from when she was arrested for this offense, March 26, 2019, until the court issued an order releasing her on her own recognizance on May 30, 2019.

STATEMENT OF THE CASE

On March 26, 2019, the State arrested Cheyenne Zielie and charged her with felony criminal possession of dangerous drugs. (District Court Document (DC) 1.) Ms. Zielie was held on bail until May 30, 2019, when the court issued an order which released her on her own recognizance. (DC 14.) On September 11, 2019, Ms. Zielie pled guilty to criminal possession of dangerous drugs. (DC 25.) (A copy of her "Change of Plea, and Sentence, Order to Close file, and Order Exonerating Bond" is attached as Appendix (App.) A.) The court

sentenced her to a three-year suspended sentence. (App A.) The court denied any credit for time served because the court reasoned, "[t]he defendant is a Department of Corrections inmate and is not eligible for credit for time served." (App. A.)

On May 3, 2021 the State filed a petition to revoke. (DC 34.) Based on this petition to revoke, on January 4, 2023, the district court revoked Ms. Zielie's suspended sentence and sentenced Ms. Zielie to the Department of Corrections for three years. (DC 96.) (A copy of the "Dispositional Order, Order to Close File and Order Exonerating Bond" is attached as App. B.)

STATEMENT OF THE FACTS AND PROCEDURE

Cheyene Zielie struggled with addiction for years and found herself arrested in 2019 while being in possession of methamphetamine. (DC 2, 10.) She pled guilty, and the court sentenced her to three years of probation. (App. A.) The court ordered her sentence to run concurrent to a different matter, in which Ms. Zielie was incarcerated. (App. A.)

Ms. Zielie was released from her other sentence onto her suspended sentence on July 23, 2020. (DC 26.) On March 4, 2021,

almost two years into her suspended sentence, the State filed a petition to revoke, based largely on allegations Ms. Zielie had failed to stay in contact with her probation officer and keep her probation officer updated regarding her residence and employment. (DC 26.)

Three weeks later, the State filed a motion to dismiss, in the interest of justice, as Ms. Zielie had complied with her probation. (DC 30.) Based on the State's motion, the court issued an "Order Dismissing Case With Prejudice." (DC 31.) The court quashed the revocation warrant and ordered "the above-captioned case shall be dismissed with prejudice, in the interest of justice." (DC 31.) (A copy of the "Order Dismissing Case With Prejudice" is attached as App. C.)

Despite the case being dismissed, approximately a month later, the State filed another petition to revoke, based on allegations of violations which had occurred after the order to dismiss with prejudice had been filed. (DC 34.) Over the next year, the State filed two additional addendums to the revocation petition. A new attorney from OPD was assigned to represent Ms. Zielie. (DC 40.) Additionally, while the case was pending, a new district court judge was assigned to the case. (DC 35.)

On May 18, 2022, the court held an evidentiary hearing in which Ms. Zielie admitted she had received new criminal convictions for possession of drugs, a DUI and other driving offenses. (5/18/22 Transcript (Tr.) pp. 10-16.) All of these new convictions occurred subsequent to the original petition to revoke and after the district court had signed the order to dismiss with prejudice. (DC 33, 41, 72.) She also admitted to using methamphetamine and failing to report to her probation officer. (5/18/22 Tr. pp. 10-16.)

After the evidentiary hearing and before the disposition hearing, Ms. Zielie's new attorney discovered the order dismissing the case and realized her case should have remained closed. (11/02/22 Tr. p. 3.) The court continued the disposition hearing and ordered briefing by the parties. (11/02/22 Tr. pp. 5-7.) In accordance with the court's order, Ms. Zielie filed a motion to dismiss and be released from custody and argued the case could not have been reopened once it was closed with an order to dismiss with prejudice. (DC 90.) The State filed no response to Ms. Zielie's motion. (01/04/23 Tr. p. 3.) Nonetheless, the Court proceeded with a dispositional hearing. (01/04/23 Tr. p. 3.)

At the hearing, defense counsel orally supported his motion to dismiss and reminded the court that the matter had been dismissed at the State's urging and that the State had failed to address the order to dismiss if the State had believed it was in error:

> … had the State intended to seek correction of an order, either because they filed the motion with improper words and phrases, or because they felt that an undue justice was being performed, they had the time to do that, to seek a correction within 120 days, or to appeal the order. They did not do those things, and the time to do either has passed.

(01/04/23 Tr. pp. 3-4.) The prosecutor admitted he had failed to brief the issue, with no explanation. (01/04/23 Tr. p. 4.) Nonetheless, the State told the court it opposed Ms. Zielie's motion to dismiss and agreed with the court that the proposed order, as signed by the court, was a clerical error. (01/04/23 Tr. p. 5.) Nevertheless, the State admitted, "as Mr. Kuntz has pointed out, the time to correct those clerical errors like that, to issue a corrected order has passed." (01/04/23 Tr. p. 6.) Defense counsel concurred:

> This was all done by the State. This is their handiwork, so hands tied as they might be on this one, unfortunately their timeline to seek correction has passed.

(01/04/23 Tr. p. 7.)

Despite no briefing from the State, the court, on its own, citing Mont. Code Ann. § 46-18-116(3) and citing *State v. Winterrowd*, 1998 MT 74, 288 Mont. 208, 957 P. 2d 522 and *State v. Christianson*, 1999 MT 156, 295 Mont. 100, 983 P. 2d 909, held the State did not have an intent to dismiss the entire case. (01/04/23 Tr. pp. 8-11.) (A copy of the dispositional hearing transcript pages (01/04/23 Tr. pp. 3-11) in which counsel and the court discussed the motion to dismiss and in which the court issued its ruling, are attached as App. D.) Therefore, the Court denied Ms. Zielie's motion to dismiss. (01/04/23 Tr. p. 11.) Two days after the disposition hearing, the court issued a written order denying the motion to dismiss. (DC 95.) ("Order Denying Defendant's Motion to Dismiss and Release From Bail" attached as App. E.)

After the court denied Ms. Zielie's motion to dismiss, the court sentenced her to three years to the Department of Corrections, none suspended. (01/04/23 Tr. pp. 21-22.) The court ordered 546 days "street time" and 137 days credit for time served. (01/04/23 Tr. pp. 21-22.) The credit for time served did not include the time she served in detention before her original sentencing on September 11, 2019. (01/04/23 Tr. pp. 11-12.)

STANDARD OF REVIEW

This Court reviews a district court's conclusions of law and interpretation of statutes *de novo* for correctness. *State v. Petersen*, 2011 MT 22, ¶ 8, 359 Mont. 200, 247 P.3d 731. A challenge to a district court's jurisdiction is an issue of law, which this Court determines *de novo. State v. Martz*, 2008 MT 382, ¶16, 347 Mont. 47, 196 P. 3d 1239 (citations omitted.) The question of a court's jurisdiction may be raised at any time. *Martz,* ¶20 (citations omitted). Further, lack of subject matter jurisdiction cannot be waived. *State v. Evert*, 204 MT 178, ¶13, 322 Mont. 105, 93 P. 3d 1254 (citations omitted).

Calculating credit for time served is not a discretionary act, but a legal mandate. *State v. Crazymule*, 2024 MT 228, ¶ 8, --- Mont. ---, --- P.3d ---. A district court's determination of credit for time served is reviewed *de novo* for legality. *Crazymule*, ¶ 8.

SUMMARY OF ARGUMENT

Upon motion by the State, in the interest of justice, the district court issued an order which dismissed, with prejudice, the case against Ms. Zielie. A dismissal with prejudice is a final judgment of a criminal case. The district court had no authority or jurisdiction to vacate the

order of dismissal and allow the state to reinstate the proceedings against Ms. Zielie. If the State considered the order of dismissal an error, proper and exclusive means for contesting that final judgment was by appeal to this Court, which the State failed to do. The district court had no jurisdiction to reinstate the proceedings against Ms. Zielie. Therefore, her conviction must be vacated.

Alternatively, Ms. Zielie served 66 days in jail, on this offense, prior to her conviction but never got credit for it. Montana law requires she receive credit for each day of incarceration prior to her conviction. The judgment should be corrected to credit an additional 66 days Ms. Zielie has already served.

ARGUMENT

I. Pursuant to a motion by the State, in the interest of justice, the district court dismissed, with prejudice, the criminal case against Ms. Zielie. An order of dismissal in a criminal case is a final judgment. Therefore, did the district court lack jurisdiction to re-open the case and proceed with a subsequent probation violation?

A. An order of dismissal with prejudice in a criminal case is a final judgment, and the district court lacked authority to reinstate the case.

This Court has repeatedly prohibited district courts from amending orders of dismissal. A district court loses jurisdiction over a criminal

case the moment it issues an order dismissing the case. *State ex rel. Torres v. Mont. Eighth Jud. Dist. Ct., Cascade Co.*, 265 Mont. 445, 453, 877 P.2d 1008, 1012 (1994) ("having dismissed the information against Torres "with prejudice," the District Court was without jurisdiction to rescind its order of dismissal and to reinstate the information.") "Jurisdiction is the power and authority of a court to hear and decide the case or matter before it." *Martz*, ¶21 (citations omitted). Once the district court dismissed this case and lost jurisdiction, it was without power to act or to receive or place additional documents into the record.

Mont. Code Ann. § 46-13-402 establishes the effect of an order to dismiss in a criminal case. *State v. Mosby*, 2022 MT 5, ¶28, 407 Mont. 143, 502 P. 3d 116. An information which has been dismissed is no longer effective against a defendant. *Mosby*, ¶44. "We have long held that this law renders a dismissed information 'no longer effective against the defendant… . The statute does not provide for reinstatement of the dismissed information." *Mosby*, ¶28 *quoting State v. Onstad*, 234 Mont. 487, 490, 764 P.2d 473, 475 (1988). An order of dismissal "with prejudice" in a criminal case "acts as a final adjudication of the case and is as conclusive of the rights of the parties

as is a final judgment." *Torres*, 265 Mont. at 455, 877 P. 2d at 1012. When the trial court dismisses an information with prejudice, Mont. Code Ann. § 46-13-402 does not provide for reconsideration of the decision, and the trial court is without jurisdiction to reinstate the charges. *Torres*, 265 Mont. at 453, 877 P. 2d at 1012 *citing* Mont. Code Ann. § 46-13-402.

In *Onstad*, upon Onstad's motion, the district court dismissed an information prior to trial. *Onstad*, 243 Mont. at 488, 764 P. 2d at 474. The State later moved to set aside the dismissal order, and, three months after it dismissed the information, the district court reinstated the information. *Onstad*, 234 Mont. at 488, 764 P.2d at 474. Onstad was subsequently convicted. *Onstad*, 234 Mont. at 488, 764 P.2d at 474.

On appeal in *Onstad*, this Court reversed. *Onstad*, 243 Mont. at 491, 764 P. 2d at 476. The Court highlighted that the district court had no authority to reinstate the information, and that once the information was dismissed the dismissal order became a final judgment subject to appeal. *Onstad*, 234 Mont. at 489-490, 764 P.2d at 475. The Court affirmatively rejected the State's argument that the district court could reinstate the information as a nunc pro tunc correction of the record.

Onstad, 234 Mont. at 490, 764 P.2d at 475. As this Court has subsequently explained, the "'subsequent trial, conviction and sentence under the reinstated information are invalid.'" *Mosby*, ¶29 *quoting Onstead*, 234 Mont. at 490, 764 P. 2d at 475.

In *Torres* this Court built upon its holding in *Onstad*. *Torres*, 265 Mont. at 450-453, 877 P. 2d at 1009-1012. In *Torres*, the district court (upon a defendant's motion) dismissed a criminal case with prejudice. *Torres*, 265 Mont. at 448, 877 P. 2d 1010. The State filed a motion for reconsideration alleging "factual and legal errors" in the order of dismissal and asking the district court to "vacate its ruling." *Torres*, 265 Mont. at 448, 877 P. 2d at 1010. In response to the State's motion, the district court "rescinded" the previous order of dismissal and set the case for trial. *Torres*, 265 Mont. at 448-550, 877 P.2d at 1010. This Court, after Torres filed a petition for a writ of supervisory control, held the "decree of dismissal with prejudice is as conclusive of the rights of the parties as if the suit had been prosecuted to a final adjudication adverse to the plaintiff." *Torres*, 65 Mont. at 452, 877 P.2d at 1012. This Court explained: "[H]aving dismissed the information against Torres 'with prejudice,' the district court was without jurisdiction to

rescind its order of dismissal and to reinstate the information." *Torres*, 265 Mont. at 453, 877 P.2d at 1013.

Torres stands for the proposition that upon dismissal of a criminal case with prejudice, a district court loses jurisdiction to amend its final order and reinstate criminal charges. *Torres*, 265 Mont. at 449, 877 P. 2d at 1010 ("we hold that the District Court was without jurisdiction to rescind its order.") Here, Ms. Zielie had served two years of her suspended sentence,[1] and in the interest of the justice, the district court issued an order dismissing the case with prejudice. After the district court dismissed this case with prejudice, it had no authority to vacate that order of dismissal and reinstate the proceedings against Ms. Zielie.

B. The district court incorrectly relied upon cases involving amendments to judgments.

Rather than analyzing the issue pursuant to the dismissal statute, (Mont. Code Ann. § 46-13-402), here the district court inappropriately considered Mont. Code Ann. § 46-18-116(3) (correction of a factually erroneous sentence) to determine it had statutory authority to reinstate

[1] When certain conditions are met, a suspended sentence can be terminated at two-thirds of the time suspended. Mont. Code Ann. § 46-18-208.

the case against Ms. Zielie. However, this Court explicitly held in *Torres* that an order of dismissal is not the same thing as a "judgment" since the order did not adjudicate guilt. *Torres*, 265 Mont. at 451, 877 P. 2d at 1012.

Further, the case relied upon by the district court, *State v. Winterrowd*, substantiates that a matter cannot be revived against the defendant. A jury convicted Winterrowd of burglary and theft, but the district court issued a judgment sentencing him for burglary only. *Winterrowd*, ¶7. Four months later the court issued a nunc pro tunc order that also sentenced Winterrowd for theft. *Winterrowd*, ¶8. This Court vacated the nunc pro tunc order because a court can only amend a judgment to "make the record reflect what was actually decided[,]" and the record showed the court did not originally sentence Winterrowd for theft. *Winterrowd*, ¶¶14, 16.

Here, the court erred when it disregarded the 2021 order of dismissal with prejudice. No legal authority existed—in Mont. Code Ann. § 46-14-302, Mont. Code Ann. § 46-18-116(3) or elsewhere—for the court to reverse the order of dismissal and reinstate Ms. Zielie's charges. There was no dispute among the parties or the district court

that the 2021 dismissal order dismissed the entire information. Thus, there was no disagreement regarding what "was actually decided." *See*, *Winterrowd*, ¶ 14.

The 2021 dismissal order was factually correct because it stated the truth of what occurred—the case was dismissed—and there is nothing in the record to show the court did not in fact dismiss Ms. Zielie's case. Questions about the effect of the dismissal order are legal questions not factual questions. Courts are not allowed to try to shoehorn legal errors into purported factual misstatements just to avoid procedural bars. To alter and reverse the dismissal order required the court make an amendment adding to the record, which is exactly what this Court has prohibited district courts from doing. *See, State v. Megard*, 2006 MT 84,¶ 21, 332 Mont. 27, 134 P. 3d 90.

C. The State had a remedy through an appeal to this Court.

The party contesting a dismissal order must appeal the order to this Court. In *State v. Child*, the district court dismissed a criminal case with prejudice because it held the State failed to timely file a response to Child's motion to dismiss. *State v. Child*, 2009 MT 148, ¶4,

350 Mont. 369, 207 P. 3d 339. The State filed a motion to alter or amend the order of dismissal because the court applied the wrong deadline. *Child*, ¶5. On the same day the State filed its motion, the court recognized its error and ostensibly rescinded the order of dismissal. *Child*, ¶¶ 4-8. Child's response to the district court claimed that the district court lacked jurisdiction to amend its final order of dismissal. *Child*, ¶7. Before the district court issued an order regarding Child's jurisdictional claims—because the deadline for appeal was approaching—the State filed a notice of appeal to this Court appealing the district court's order of dismissal. *Child*, ¶¶ 7-8,

This Court in *Child* reversed the district court's order of dismissal because the district court erred in calculating the State's deadline. *Child*, ¶10. The majority opinion didn't reach Child's jurisdictional argument because the State filed an appeal, so the question did not need to be addressed. *Child*, ¶¶ 9-11. Justice Nelson's concurrence, however, directly addressed the district court's jurisdiction, "When a criminal case is dismissed with prejudice, the dismissed information is no longer effective against the defendant and cannot be reinstated."

Child, ¶¶ 17-19 (Nelson, J., specially concurring, citations omitted). As Justice Nelson set forth in Child:

> On the District Court's dismissal of the information with prejudice on motion of the defendant, the appropriate remedy for the State was to appeal, not request reconsideration of the court's order.

Child, ¶ 19 (Justice Nelson concurring) *citing Torres*, 265 Mont. at 453, 877 P. 2d at 1013 (*citing Onstad*, 243 Mont. 489-490, 764 P. 2d at 475.) Here, as the State recognized in *Child*, the State had the remedy of appeal if it disagreed with the court's order to dismiss with prejudice. However, the State failed to take such action.

If anything, the 2021 dismissal order was illegal, and the State should have requested its review on appeal at the time it was entered. Upon filing, a district court's order dismissing a criminal case with prejudice "became a final judgment *and was appealable*." *Onstead*, 234 Mont. at 489, 764 P. 2d at 475 (emphasis added); *See also*, Mont. R. App. P. 4(1)(a). When a party intends to challenge a district court's illegal decision, it must do so on appeal, not in the district court. *Peterson*, ¶¶ 14, 17; *See also*, Mont. Code Ann. § 46-20-103(2)(a) (authorizing the State to appeal from an order dismissing a case); *Torres*, 265 Mont. at 454, 877 P.2d at 1013 (determining that the

appropriate remedy for the State was to appeal, not request reconsideration of the district court's dismissal order). The State in this case never appealed the 2021 dismissal order to this Court.

Montana law is unequivocal that district courts do not have appellate jurisdiction over mistakes of law in their own criminal adjudications. The court exercised "an appellate power" over its decision to dismiss Ms. Zielie's conviction without proper authority to do so. *See, Megard*, ¶ 20.

D. The district court's order allowing the State to reinstate the case against Ms. Zielie was illegal.

When the district court ruled charges could be reinstated against Ms. Zielie, despite the dismissal order, the court did exactly what this Court has forbade—it set aside the order rendered. *See, Megard*, ¶ 19. This did not "make the record speak the truth." *See, Megard*, ¶ 20. To the contrary, it completely changed and reversed what was decided. *See, Onstad*, 234 Mont. at 490, 764 P.2d at 475; *Torres*, 265 Mont. at 453, 877 P.2d at 1012-13.

Like the district courts in *Onstad*, *Torres*, *Winterrowd*. and *Megard* that tried to amend dismissal orders and judgments because the courts claimed they originally did something they should not have

done, here, the district court tried to amend the dismissal order on the basis that the State did not intend to dismiss the case. Ms. Zielie cannot be faulted because the State used a stock motion, and the court rubber stamped the State's proposed order. However, the fact is that the court did dismiss Ms. Zielie's case, with prejudice, and, as this Court has decided repeatedly, it cannot amend the record at a later date.

II. Alternatively, is Ms. Zielie entitled to 66 days credit for time served from when she was arrested for this offense, March 26, 2019, until the court issued an order releasing her on her own recognizance on May 30, 2019?

A. Ms. Zielie must receive credit for time served prior to her 2019 conviction.

When the State initially arrested Ms. Zielie, she was incarcerated on a $1,000 bond from March 26, 2019 until May 30, 2019, when the district court issued an order releasing her on her own recognizance. (DC 1, 14.) The district court at her sentencing hearing did not give her credit for these days since she was already serving a Department of Corrections sentence. (App. A.) Pre-conviction jail time credit toward a sentence granted by statute is a matter of right. *State v. Hornstein*, 2010 MT 75, ¶ 12, 356 Mont. 14, 229 P.3d 1206. A sentence that fails to award the proper amount of credit for time served violates statutory

mandates and is subject to appellate review, even absent an objection. *State v. McCaslin*, 2011 MT 221, ¶ 8, 362 Mont. 47, 260 P.3d 403; *State v. Erickson*, 2005 MT 276, ¶ 27, 329 Mont. 192, 124 P.3d 119; *Killam v. Salmonsen*, 2021 MT 196, ¶ 12, 405 Mont. 143, 492 P.3d 512; *State v. Lenihan*, 184 Mont. 338, 602 P.2d 997, 1000 (1979).

"A person incarcerated on a bailable offense against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction[.]" Mont. Code Ann. § 46-18-403(1) (2021). This law was also in effect at the time of Ms. Zielie's original offense. Mont. Code Ann. § 46-18-403(1) (2019); *see also State v. Tracy*, 2005 MT 128, ¶ 16, 327 Mont. 220, 113 P.3d 297 (superseded in part by statute) (a person has the right to be sentenced under the statutes in effect at the time of the offense). "By its plain language, § 46-18-403(1), leaves no discretion to the sentencing court to determine whether a defendant incarcerated on a bailable offense receives credit for incarceration prior to or after conviction." *Killam*, ¶ 14.

Regarding the term "bailable offense" in § 46-18-403(1)

(2021), "All persons shall be bailable before conviction, except when death is a possible punishment for the offense charged and the proof [of the potentially death invoking offense] is evident or the presumption great that the person is guilty of the offense charged." Mont. Code Ann. § 46-9-102(1); *Killam*, ¶ 13, n. 2. The term "judgment of imprisonment" as stated in § 46-18-403(1), includes suspended sentences. *McCaslin*, ¶ 16. A period of presentence incarceration may apply simultaneously to two separate, pending, bailable offenses, entitling the defendant, upon conviction of those offenses, to credit for time served against both sentences if they are run concurrently. *State v. Pavey*, 2010 MT 104, ¶ 25, 356 Mont. 248, 231 P.3d 1104 *citing Erickson*, ¶¶ 22–24; *State v. Price*, 2002 MT 150, ¶¶ 27–28, 310 Mont. 320, 50 P.3d 530.

Pursuant to § 46-18-403(1), Ms. Zielie must be credited for the 66 days she spent incarcerated prior to her conviction. The plain language regarding bailable offenses indicates a bailable offense is any non-capital offense. Upon Ms. Zielie's arrest on March 26, 2019, bail was set at $1,000.00. (DC 1). The court continued bail at $1,000 at Ms. Zielie's initial appearance. (DC 3.) On May 20, 2019, the district court issued an order releasing her on her own recognizance. (DC 14.) The fact Ms.

Zielie may have had bonds set in other matters at the time, or that she received a suspended sentence, does not preclude her from receiving credit from March 26, 2019 through May 30, 2019. This Court's statement in *Killam* regarding the plain language of § 46-18-403(1), indicates Ms. Zielie must receive credit for her time served prior to conviction because she was held on a bailable offense.

B. Section 46-18-203(7)(b) requires Ms. Zielie receive credit for time already served upon revocation of her suspended sentence.

Section 46-18-203(7)(b) "controls revocation of a suspended sentence[.]" *State v. Souther*, 2022 MT 203, ¶ 10, 410 Mont. 330, 519 P. 3d 1. If a suspended sentence is revoked, "[c]redit must be allowed for time served in a detention center or for home arrest time already served." Mont. Code Ann. § 46-18-203(7)(b); *State v. Tippets*, 2022 MT 81, ¶ 18, 408 Mont. 249, 509 P.3d 1; *State v. Kortan*, 2022 MT 204, ¶ 20, 410 Mont. 336, 518 P.3d 1283; *State v. Jardee*, 2020 MT 81, ¶ 9, 399 Mont. 459, 461 P.3d 108; *State v. Gudmundsen*, 2022 MT 178, ¶ 12, 410 Mont. 67, 517 P.3d 146; *see also* Mont. Code Ann. § 46-18-201(9) (2021) (if any conditions of sentence are violated, credit must be allowed for jail time already served).

"The provisions of [§ 46-18-203] apply to any offender whose suspended or deferred sentence is subject to revocation regardless of the date of the offender's conviction and regardless of the terms and conditions of the offender's original sentence." Mont. Code Ann. § 46-18-203(12) (2021) (emphasis added). Additionally, this Court has held that §§ 46-18-401(1) and 46-18-203(7)(b), read together, require credit be granted for time spent in a detention center on all sentences being served concurrently. *Tracy*, ¶ 28.

The determination of credit for time served under § 46-18-203(7)(b) is straightforward, just like that in § 46-18-201(9) because there is no need to determine whether Ms. Zielie was incarcerated on a bailable offense. "Credit must be allowed for time served in a detention center[.]" Mont. Code Ann. § 46-18-203(7)(b). The statute is clear and unambiguous. It contains no language narrowing its application to the "time served" while the revocation was pending. It applies to all time served toward the sentence.

Ms. Zielie served 66 days in the Cascade County Detention Center from her arrest, March 26, 2019, to when she was released on her own recognizance on May 30, 2019. She must receive credit for it. These 66

days were not included in the 137 days of credit he received at the January 4, 2023 dispositional hearing. It must be imposed now.

CONCLUSION

The district court issued an order which dismissed Ms. Zielie's criminal case with prejudice, which constituted a final judgment. Upon issuing the order to dismiss with prejudice, the district court lost its authority and jurisdiction to vacate or substantively modify it and to allow the State to reinstate proceedings against Ms. Zielie. Therefore, Ms. Zielie's conviction must be dismissed.

Alternatively, Ms. Zielie respectfully requests the Court remand this matter with instructions to amend the judgment granting an additional 66 days credit toward the sentence.

Respectfully submitted this 6th day of May, 2024.

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By: /s/ Kristina L. Neal
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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 4,750, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Kristina L. Neal
KRISTINA L. NEAL

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 05-06-2024:

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