IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0549

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MATTHEW JASON WELCH,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Thirteenth Judicial District Court, Yellowstone County, the Honorable Donald L. Harris, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Authorities

United States Constitution

Montana Constitution

Statutes

STATEMENT OF THE ISSUES

Matt's plea agreement obligated both parties to recommend sentences that exceeded the maximum penalty on four of the ten counts. No evidence exists of a lawful agreement regarding those four counts at the time Matt entered into the agreement. The court denied Matt's motion to withdraw his pleas after it reduced the unlawful sentences to the three-year maximum. Did the court err by finding its fix rendered the pleas voluntary?

Does the Amended Judgment require correction because it lists two restitution amounts that are higher than what was orally pronounced?

STATEMENT OF THE CASE

Matthew Jason Welch appeals his conviction and sentence from the Amended Judgment of the Yellowstone County District Court. Matt specifically appeals the court's denial of his motion to withdraw his guilty pleas and to amend incorrect restitution amounts.

The State originally charged Matt with 11 crimes: Five counts of Deceptive Practices in violation of Montana Code Annotated § 45-6-317 (2019), punishable by up to 10 years imprisonment, one count of

Deceptive Practices, punishable by up to three years imprisonment, two counts of Theft in violation of § 45-6-301, punishable by up to 10 years imprisonment, and three counts of Theft, punishable by up to three years imprisonment. (Doc. 20.) The parties entered into a plea agreement and the next day Matt entered guilty pleas to eight counts. (Doc. 50–51.) Matt later pled guilty to the remaining two counts; the court dismissed Count Eight.[1] (Doc. 54.) The court sentenced Matt to 10 consecutive sentences of 10 years in prison with five suspended for each count. (Doc. 62.)

Matt appealed, and upon the State's stipulation, this Court remanded and ordered the district court to correct the judgment by striking several conditions of the sentence and to impose lawful sentences on Counts Three, Five, Six, and Ten because the maximum on these four counts was three years, not ten. (Doc. 62, 68, 72.)

Before being resentenced, Matt filed a motion to withdraw his guilty pleas, which the court denied. (Doc. 85, 101, 105.) (Doc. 105, Order Denying Motion to Withdraw Guilty Plea, attached as Appendix

[1] Matt already pled guilty to the underlying matter for Count Eight in Musselshell County. (Doc. 85, Ex. B at 17, 22.)

A.) The court replaced all four unlawful sentences with three-year sentences to the Department of Corrections (DOC) in each. (Doc. 110, Amended Judgment, attached as Appendix B.) It also increased the restitution amounts on Counts Four and Eleven from what it pronounced orally. (Doc. 85, Ex. B at 31, 34; 110 at 3.) Matt timely appealed. (Doc. 112.)

STATEMENT OF THE FACTS

Matt's non-binding plea agreement appeared to resolve all ten charges. (Doc. 50, Acknowledgement and Waiver of Rights by Plea of Guilty and Plea Agreement, attached as Appendix C.) Matt agreed to plead guilty to every charge; in exchange, the State agreed to jointly recommend 10-year sentences with five suspended on every count; Counts One through Five would run concurrently with each other, but consecutive to the remaining counts and any other sentences. (Doc. 50 at 6–7.) Matt held up his end of the bargain by pleading guilty to each count. (Doc. 51, 54.) At sentencing, both the State and Matt's counsel

recommended sentences conforming to the agreement,[2] though Matt's counsel requested the sentences run concurrent to Matt's Musselshell County matters, as the parties had apparently agreed Matt could argue for a lesser sentence. (Doc. 85, Ex. B at 11, 13, 15–18.)

The court rejected the recommendations and imposed 10 years in prison with five years suspended on all ten counts, all consecutive to one another, and consecutive to all other sentences. (Doc. 62.) Matt received 50 years in prison followed by 50 years of probation for property crimes. (Doc. 62.)

The sentences for Counts Three, Five, Six, and Ten—as well as the recommendations from the State and Matt's counsel—exceeded the maximum penalty of three years. (Doc. 72.) Matt appealed the unlawful sentences, the State conceded, and this Court ordered the district court to impose lawful sentences. (Doc. 72.)

Upon remand, but prior to being resentenced, Matt timely moved

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[2] Though not expressly stated in the agreement, the State argued for a "net term of sentence" of 20 years with 10 suspended, suggesting the agreed-upon recommendation was that Counts Six, Seven, Nine, Ten, and Eleven would run concurrently with each other, but consecutive to the other five (Counts One through Five), which would run concurrently with each other. (Doc. 50 at 7; 85, Ex. B at 16.)

to withdraw his guilty pleas. (Doc. 85.) Matt argued his pleas were involuntary because the plea agreement contained sentence recommendations for Counts Three, Five, Six, and Ten that were illegal. (Doc. 85.) Matt also raised ineffective assistance of counsel (IAC), arguing counsel allowed him to enter a plea agreement containing unlawful sentences and recommended those unlawful sentences in court. (Doc. 85 at 7.)

The State acknowledged the parties made unlawful sentencing recommendations, but argued it was a "drafting error" and because the correct maximum possible penalties were contained in the agreement, Matt's pleas were voluntary. (Doc. 91.) Additionally, the State argued Matt could not have been induced to plead guilty by a sentence recommendation that exceeded the maximum penalty and that his counsel acted competently. (Doc. 91 at 6–7.)

The district court held a hearing where Matt testified. (Doc. 101.) Matt testified that he reviewed the plea agreement with counsel briefly before pleading guilty and had concerns with "the timeframe on the charges, and also . . . the sentencing length of the charges[.]" (4-14-23 Tr. at 4–5.) Matt signed two different parts of the agreement: one part

containing the correct possible penalties, and another part containing the agreed-upon recommendations that included the unlawful 10-year penalties. (4-14-23 Tr. at 5–6.) Matt raised the discrepancy with his attorney who said he would fix it. (4-14-23 Tr. at 9–10.) Counsel never raised the issue at Matt's change of plea and recommended what was in the agreement at sentencing. (4-14-23 Tr. at 6.)

At the hearing on Matt's motion to withdraw his plea the State presented Matt with a copy of the agreement, and he acknowledged his initials near the accurate maximum penalties indicated that he knew what the maximum penalties were. (4-14-23 Tr. at 15.) The State and Matt then had the following exchange:

> Q. Okay. So would you agree that because the parties recommended 10 years instead [of three], you did not want 10 years. Correct? You didn't want 10 years. Correct?
> A. No.
> Q. You wanted 3 years. Right?
> A. Correct.
> Q. Okay. So you would not have been relying on us making a 10-year recommendation to change your plea to guilty; would you?
> A. No.
> Q. Because you would have relied on and been induced by a 3-year -- a 3-year term, which was the lawful term. Correct?
> A. Yes. I'm guilty of the lawful, I guess, term.
> Q. Right.

A. I'm not guilty of --
Q. Of the 10?
A. I don't know how you want me to answer; but I'm not trying to argue that I'm guilty or not. I'm guilty. It's a maximum amount of time is what I'm arguing on that.

. . .

A. I am guilty; but some of the – what I'm, I guess, not guilty of is some of the counts on here are wrong, and there's issues with the amounts of money involved, that I can prove that [counsel] never brought up.

. . .

Q. I mean I heard you say that you were not induced – or you could not have been induced by us promising to recommend a much harsher sentence in order to change your plea. Is that what I heard you say?
A. I'm not understanding.
Q. Okay. You had said everyone knows that 10 is way more than 3; and so if the plea agreement said 10 years, you wouldn't be jumping all over that and say: Yeah, I want that, so I'm going to change my plea to guilty. Right? Because it's 10 years. Does that make sense? I don't want 10 years, I want the max 3. Does that make sense?
A. Um, sure.
Q. Okay.
A. Um, yeah.
Q. So you would prefer to have 3 rather than 10. Right?
A. You're confusing me.
Q. You would prefer to have the maximum 3 years rather than an illegal sentence of 10 years. Right?
A. I would prefer -- well, yes, of course.

(4-14-23 Tr. at 16, 18–19, 21–22.)

The State acknowledged "there was no actual value to [Matt in]

the State's agreement to recommend 10 DOC with 5 suspended," that Matt sought withdrawal of his plea because "he didn't know what he was agreeing to" and argued Matt could "not have been induced to plead guilty by the parties' plea agreement." (4-14-23 Tr. at 30, 35, 37.)

The court implicitly found Matt had good cause to withdraw the plea under the general rule that a defendant is entitled to do so if it is subsequently determined that the sentence was illegal. (Doc. 105 at 4.) But, under a federal exception to the general rule, withdrawal was unnecessary because the State accepted a sentence reduced to the legal term. (Doc. 105 at 5.) In support of this exception, the court also stated Matt maintained his guilt "on all counts and indicated that he was induced to enter the Plea Agreement by the legal term of imprisonment of three years" for those counts and "also indicated that he prefers the maximum three year imprisonment." (Doc. 105 at 5.)

The court also found that Matt's counsel's performed deficiently, but Matt suffered no prejudice "because he did not lose any benefit under the plea bargain." (Doc. 105 at 5–6.)

At resentencing, the State recommended the court impose three years DOC for Counts Three, Five, Six, and Ten; that Counts One

through Five run concurrently to each other but consecutively to Counts Seven through Eleven, and all counts to run consecutively to any other sentence. (6-20-23 Tr. at 6–7.) The court imposed 3 years DOC on all four counts, none suspended, all consecutive to any other sentences. (Doc. 110). Matt's new net sentence amounted to 30 years prison, then 12 years DOC, followed by 30 years suspended. (Doc. 110.)

The Amended Judgment contained higher restitution amounts on Counts Four and Eleven than what the court orally imposed at the original sentencing hearing. (Doc. 85, Ex. B at 31, 34; 110 at 3.)

STANDARDS OF REVIEW

A district court's denial of a motion to withdraw a guilty plea is reviewed de novo. *State v. Warclub,* 2005 MT 149, ¶ 17, 327 Mont. 352, 114 P.3d 254.

This Court reviews the legality of criminal sentences that include at least one year of actual incarceration de novo. *State v. Hamilton*, 2018 MT 253, ¶ 14, 393 Mont. 102, 428 P.3d 849.

SUMMARY OF THE ARGUMENTS

Matt was never fully aware of the actual value of the commitments made to him by the State and his own counsel when he

entered his guilty pleas. Matt's plea agreement committed the prosecutor and Matt's counsel to recommending unlawful 10-year sentences, which both followed at sentencing. There was no value to Matt in this recommendation. The lawful bargain for Counts Three, Five, Six, and Ten remains unknown, or was never formed. Matt's testimony that three-year sentences were preferable to 10-year sentences did not mean he wanted the maximum of three years imprisonment. Obviously he would prefer shorter, lawful sentences. But Matt never got the benefit of a plea bargain regarding the four counts at issue because there is no evidence that the court's imposition of maximum consecutive sentences on all four counts was the original bargain, nor would such an agreement be considered a bargain.

The Amended Judgment issued after the court resentenced Matt on four of the ten counts increased restitution for two victims. But there were no changes to restitution at the resentencing hearing. The restitution needs corrected to reflect the accurate amounts pronounced at the original sentencing hearing.

ARGUMENTS

I. The court erred when it denied Matt's motion to withdraw his plea.

A guilty plea entered pursuant to a plea agreement contemplating illegal sentences cannot be specifically enforced, which raises questions about the voluntariness of the plea. Matt's plea agreement contemplated illegal sentences on four of the ten counts, calling into question the voluntariness of his plea. There is no evidence of any lawful agreement encompassing those four counts, thus Matt never got any benefit to the bargain of his guilty pleas, contrary to the conclusion of the district court.

A. Matt could not enter into a plea bargain contemplating illegal sentences.

The court may permit a defendant to withdraw his guilty plea when good cause is shown. Mont. Code Ann. § 46-16-105(2); *State v. Deserly*, 2008 MT 242, 344 Mont. 468, 188 P.3d 1057 (overruled on other grounds). "Good cause" as used in Montana Code Annotated § 46-16-105, includes the minimal constitutional requirement that a guilty plea be voluntary and intelligent. *Deserly*, ¶ 11; *State v. Brinson*, 2009 MT 200, ¶ 8, 351 Mont. 136, 210 P.3d 164. The ultimate test for withdrawal

of a plea is voluntariness. *State v. Lone Elk*, 2005 MT 56, ¶ 14, 326 Mont. 214, 108 P.3d 500 (overruled on other grounds). A defendant's plea is voluntary only when the defendant is "fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel[.]" *Lone Elk*, ¶ 21 (citing *Brady v. United States*, 397 U.S. 742, 755 (1970)). In determining whether a plea was voluntary, this Court examines case-specific considerations, including the benefit the defendant obtained from the plea agreement. *State v. Garner*, 2014 MT 312, ¶ 26, 377 Mont. 173, 339 P.3d 1. Doubts that suggest a guilty plea is involuntary should be resolved in the defendant's favor. *State v. Knox*, 2001 MT 232, ¶ 10, 307 Mont. 1, 36 P.3d 383.

If the court, the prosecutor, or defendant's counsel induced the plea by threats or promises; misrepresentation, including unfulfilled or unfulfillable promises; or promises having no proper relationship to the prosecutor's business (e.g. bribes), that evidence indicates involuntariness. *Lone Elk*, ¶ 21 (citing *Brady*, 397 U.S. at 753, 755). An involuntary guilty plea is void. *Machibroda v. United States*, 368 U.S. 487, 493 (1962).

Generally, a defendant who has entered a guilty plea pursuant to a plea bargain that contemplates a particular sentence, is entitled to withdraw the plea if it is subsequently determined that the sentence is illegal. *Deserly*, ¶ 16.

> There can be no plea bargain to an illegal sentence. Even when a defendant, prosecutor, and court agree on a sentence, the court cannot give the sentence effect if it is not authorized by law. Thus, when a defendant has entered a plea bargain contemplating an illegal sentence, the defendant is generally entitled to withdraw the guilty plea. Because the plea bargain is based on a promise the trial court lacks authority to fulfill, and the defendant was induced to plead guilty by that promise, plea withdrawal is necessary to return the parties to their initial positions.

Deserly, ¶ 16 (quoting *United States v. Greatwalker*, 285 F.3df 727, 729–30 (8th Cir. 2002)).

Here, the court implicitly found Matt's plea was involuntary in two ways. First, the court found that an exception from *Greatwalker* applied, which negated the need to grant withdrawal of Matt's plea. The court would not have applied a *Greatwalker* exception if it found that Matt's plea was voluntary. Second, the court expressly found that Matt's counsel performed deficiently by recommending illegal sentences, but that Matt suffered no prejudice as a result. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984).

The court's implicit findings were correct. Based on the plain language from *Deserly*, Matt should have been entitled to withdraw his guilty plea entered pursuant to a plea bargain that recommended illegal sentences. Additionally, when there is no plausible justification for counsel's acts, such as advising a client to enter into a plea bargain that contemplated illegal sentences, and advocating that longer, illegal sentences be imposed, the record does not need to reveal counsel's reasons for the act to be reviewed. *State v. Weber*, 2016 MT 138, ¶ 22, 383 Mont. 506, 373 P.3d 26; *see also Deserly*, ¶¶ 7–8, 16 (Court did not address Deserly's IAC claim for being advised to enter into a plea bargain that contemplated an illegal sentence when the Court reversed on the underlying issue that the plea bargain contemplated an illegal sentence).

Counsel's recommendation of illegal sentences showed Matt's plea was not knowing, intelligent, and voluntary. An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point, such as the maximum potential penalty to a criminal charge, is a quintessential example of unreasonable performance under *Strickland*. *See State v. Walter*, 2018

MT 292, ¶ 15, 393 Mont. 390, 431 P.3d 22. No attorney would knowingly advocate for sentences exceeding the maximum penalty for the crime. To do so is a failure to function in any meaningful sense as an adversary to the State. *See U.S. v. Cronic*, 466 U.S. 648 (1984).

B. None of the *Greatwalker* exceptions gave Matt any benefit he had bargained for.

The court erred when it concluded Matt "was not prejudiced because he did not lose any benefit under the plea bargain" and applied a *Greatwalker* exception. (Doc. 105 at 6.) The court expressly stated "the first exception in *Greatwalker* applie[d]" but referenced all three exceptions. None of the three exceptions could resolve the illegality in Matt's plea agreement. *Greatwalker* explained the three exceptions as follows:

> Withdrawal of the plea may be unnecessary when the agreed-on sentence exceeds the sentence authorized by law and [1] the government accepts a sentence reduced to the legal term, [2] when the sentence can be reconciled with the plea agreement or otherwise corrected to give the defendant the benefit of the bargain, or [3] when the defendant is willing to accept a legal sentence in place of the promised one.

Deserly, ¶¶ 21–22 (citing *Greatwalker*, 285 F.3d at 730, without adopting it.)

The first exception—expressly relied on by the court—is that the State accepted four sentences reduced to a legal term of three years instead of ten years, thus resolving the problem. But the State had no choice but to accept three-year sentences. That was the maximum lawful penalty. Plus, this Court had ordered the district court to impose lawful sentences. But the State's acceptance of legal sentences still failed to provide Matt any benefit he bargained for in the original plea agreement.

The second *Greatwalker* exception could not resolve the problem either. Because the plea agreement lacked any lawful bargain for Counts Three, Five, Six, and Ten, no sentence that the court could impose would reconcile the sentences with the plea agreement. Nor could the court otherwise correct the sentences to give Matt the benefit of the bargain in the absence of any bargain for Counts Three, Five, Six, and Ten.

This is the central problem pointing to the involuntariness of Matt's plea. Matt plead guilty to Counts Three, Five, Six, and Ten. In exchange, he received a recommendation from the State, and his own

counsel, for sentences that exceeded the maximum for these counts. Matt never received any benefit in the bargain.

The court reasoned that Matt "maintains his guilt on all counts and indicated that he was induced to enter the Plea Agreement by the legal term of imprisonment of three years" for Counts Three, Five, Six, and Ten and "also indicated that he prefers the maximum three year imprisonment." The court's rationale echoes the third *Greatwalker* exception, suggesting Matt was willing to accept a legal sentence in place of the promised one.

But Matt's preference for a legal sentence over an illegally long sentence did not give him the benefit of any bargain. This is because, again, the plea agreement contained no lawful bargain pertaining to Counts Three, Five, Six, and Ten. Of course Matt preferred a three-year sentence over a ten-year sentence. But there is no evidence that Matt pled based on an agreement the State would argue for three years to the DOC on Counts Three, Five, Six, and Ten, which is what the State recommended at the resentencing hearing. The State did not argue for any suspended time, nor did it dismiss any charges—valid considerations for this Court when evaluating the benefit to a defendant

in a plea agreement. *See Garner*, at ¶ 26; *see also Lone Elk*, ¶ 16 (whether prosecutor exchanged the plea for dismissal of another charge bears on voluntariness).

The court cherry-picked from Matt's testimony to conclude that he maintained his guilt on all counts and was induced by three-year terms of imprisonment. In addition to Matt saying "I'm not trying to argue that I'm guilty or not. I'm guilty[,]" he also testified, "I am guilty; but some of the – what I'm, I guess, not guilty of is some of the counts on here are wrong, and there's issues with the amounts of money involved, that I can prove that [counsel] never brought up." Matt said both that he is guilty and that he is not guilty. He also indicated issues with the amounts of money involved. The potential penalties depended on the amount of financial loss involved. Matt's overall testimony showed unresolved problems with the convictions and that Matt wavered as to his guilt.

Any indication Matt gave that he was willing to accept lawful sentences in place of the promised ones did not correct the problem with his pleas. Matt's preference for three-year sentences over 10-year sentences did not mean he was induced to plead guilty by three-year

sentences. The State asked Matt if he "would prefer to have 3 rather than 10. Right?" Matt said, "You're confusing me." "You would prefer to have the maximum 3 years rather than an illegal sentence of 10 years. Right?" "I would prefer -- well, yes, of course," Matt replied. Matt voiced a preference for a three-year sentence over an illegal 10-year sentence. He did not testify that maximum three-year sentences were what he originally bargained for, nor that he was willing to accept a legal three-year sentences in place of the promised one. He testified that three years was preferable to ten years. Any benefit that induced Matt to plead to Counts Three, Five, Six, and Ten remains missing.

Matt's plea agreement contained other problems too. Under the original plea agreement, not a single charge was dismissed. It included a guilty plea for a crime he had already been convicted of in a different county, which had to be dismissed at the original sentencing hearing to prevent a double jeopardy violation. (Doc. 85, Ex. B at 17, 21.) At the original change of plea hearing, Matt did not enter guilty pleas to Counts Ten and Eleven, despite having an agreement that encompassed all counts. The parties needed to continue negotiations on those counts, which shows the lack of a mutual understanding. (Doc. 51.) The State

originally recommended a "net term of sentence" of "20 years to the [DOC] with 10 years suspended[,]" which did not correspond to the plain language within the plea agreement. The agreement did not expressly provide that the recommendations for Counts Six, Seven, Nine, Ten, and Eleven would run concurrent to one another. (Doc. 50 at 7.) Though the State's "net sentence" recommendation was to Matt's benefit, the lack of clarity in the plea agreement regarding this point highlights the lack of mutual understanding between the parties. The State also said the parties had "agreed that [Matt] can argue for a lesser sentence." (Doc. 85, Ex. B at 16.) This too, was a benefit to Matt, but not mentioned in the plea agreement, which did state that "[n]o additional promises, agreements, or conditions have been entered into other than those set forth in this Agreement." (Doc. 50 at 7.) These other discrepancies in the agreement, on top of the absent bargain regarding Counts Three, Five, Six and Ten, show that Matt did not enter guilty pleas knowingly, intelligently, and voluntarily—despite his signature, initials, and colloquy that suggested otherwise.

The fact remains that at the time Matt entered his guilty plea, there was no agreement providing him any benefit in exchange for his

pleas to Counts Three, Five, Six and Ten. The State got a benefit from the bargain: Matt's guilty pleas to all counts. In exchange, Matt got nothing regarding these four counts. The district court erred by finding that the imposition of lawful, but maximum sentences to these counts gave Matt the benefit of the bargain. The totality of the circumstances shows Matt did not know what he had bargained for at the time he entered into the plea agreement and then pled guilty. His request to withdraw his plea—where he could return to his original position prior to the involuntary plea—should have been granted.

II. Matt's restitution must reflect what the court orally pronounced.

In the event of a conflict between the oral pronouncement of sentence and the written judgment, the oral pronouncement controls. *State v. Lane*, 1998 MT 76, ¶ 48, 288 Mont. 286, 957 P.2d 9. This rule derives from the a criminal defendant's right under the Sixth Amendment to the United States Constitution and Article II, § 24, of the Montana Constitution, to be present when the court pronounces sentence. *See Lane*, ¶¶ 31-33. A defendant should be aware of his sentence when he leaves the courtroom after sentencing. *Lane*, ¶ 38 (citing *United States v. Villano*, 816 F.2d 1448, 1452–53 (10th Cir.

1987)). The sentencing hearing provides the only opportunity for a defendant to respond before sentence is pronounced, thus "the sentence orally pronounced from the bench in the presence of the defendant is the legally effective sentence and valid, final judgment." *Lane*, ¶¶ 33, 40.

Here, the court orally pronounced Matt's sentence, including restitution, on March 1, 2022. The court ordered Matt to pay $6,362.00 to S.M.S for Count Four, and $5,078 to B.F.W. for Count Eleven. The original judgment accurately reflected both amounts, which were not changed at Matt's resentencing hearing on June 20, 2023. (Doc. 62 at 3.) However, the Amended Judgment erroneously imposed $6,363.00 to S.M.S., and $6,249.00 to B.F.W. [3] The Amended Judgment must be corrected to accurately reflect the orally pronounced restitution.

CONCLUSION

Matt requests this Court order his motion to withdraw his guilty pleas be granted. Alternatively, Matt requests this Court remand the

[3] The Amended Judgment also included $2,400.00 to L.P., which was orally pronounced but omitted from the original judgment, and $1,950.00 to T.R.B., matching the oral pronouncement, which was incorrectly entered as $1,920.00 in the original judgment. Matt does not challenge these restitution amounts.

case back to the district court to correct the erroneous restitution amounts from the Amended Judgment: $6,362.00 to S.M.S., and $5,078.00 to B.F.W.

Respectfully submitted this 14th day of May, 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 4,552, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Jeff Wilson
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APPENDIX

CERTIFICATE OF SERVICE

I, Jeff N. Wilson, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 05-14-2024:

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