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COUNSEL FOR RESPONDENT

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0305

REECE WANDLER,

Petitioner,

v.

CAPT. JASON KOWALSKI,

Respondent.

**ATTORNEY GENERAL'S RESPONSE TO PETITION
FOR WRIT OF HABEAS CORPUS**

In compliance with this Court's May 17, 2024 Order, the Attorney General's Office, on behalf of the State of Montana, responds to Petitioner Reece Wandler's (Wandler) Petition for Writ of Habeas Corpus, filed pursuant to Mont. Code Ann. § 46-21-101, in which Wandler asks that his dispositional order be amended to

reflect 88 days of credit for time served. For the reasons summarized below, the State agrees that Wandler is entitled to 88 days of credit for time served between his arrest on a petition to revoke his deferred imposition of sentence and when the district court revoked the deferred imposition of sentence and sentenced Wandler to the Department of Corrections (DOC) for 3 years.

BACKGROUND

On September 23, 2021, the State charged Wandler with felony theft. (Information, attached as Ex. 1.) The parties entered into a plea agreement whereby Wandler agreed to plead guilty to theft and the State agreed to recommend a three-year deferred imposition of sentence. (Pre-Trial Agreement, attached as Ex. 2.) On November 24, 2021, Wandler pled guilty to theft, a felony, and the district court deferred imposition of sentence for three years subject to numerous conditions. (Order Deferring Sentence, attached as Ex. 3.)

On July 18, 2022, Wandler was arrested in Missoula County on a probation violation hold initiated by his probation officer, and had an initial appearance in Missoula County Justice Court. (Initial Appearance on PV Hold, attached as Ex. 4.) The State filed a petition to revoke Wandler's deferred sentence. (Petition, attached as Ex. 5.) The district court issued a bench warrant for Wandler's arrest and set bail at \$50,000. (Bench Warrant, attached as Ex. 6.) A law enforcement officer served

the bench warrant on Wandler in Missoula County on July 29, 2022. (*Id.*) The Missoula County Justice Court held an initial appearance on August 1, 2022. (Minutes of Initial Appearance, attached as Ex. 7.)

On August 17, 2022, Wandler appeared before the district court in Butte-Silver Bow County, and admitted violating the conditions of his probation. (Order Revoking Deferred Sentence, attached as Ex. 8.) A presentence investigation report (PSI) was filed with the court on October 12, 2022, which notes that Wandler served 88 days in jail. (PSI attached as Ex. 9.) The same day, the district court revoked Wandler's deferred imposition of sentence and sentenced him to the DOC for 3 years. (Ex. 8.) The order indicates that the court "was advised that the Defendant was entitled to credit of time served." (*Id.* at 2.) The dispositional order states that "the Defendant shall receive credit for time served in this matter." (*Id.*) The district court did not specify the number of days for time served to which Wandler was entitled.

STATE'S RESPONSE

Wandler is entitled to credit for time served from the date he was arrested on a probation violation hold, July 18, 2022, until the district court sentenced him to the DOC on October 12, 2022, which totals 87 days. It appears from the affidavit in support of revoking Wandler's deferred imposition of sentence that he also had a

1-day jail sanction on January 3, 2022. The State therefore requests that this Court remand this matter to the district court to amend its dispositional order to reflect that Wandler is entitled to 88 days of credit for time served so the DOC can appropriately calculate his discharge date from incarceration.

Respectfully submitted this 15th day of July, 2024.

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By: /s/ Tammy K Plubell
TAMMY K PLUBELL
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this response is printed with a proportionately spaced Times New Roman 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 568 words, excluding caption, signatures, certificate of compliance, certificate of service, and any exhibits.

/s/ Tammy K Plubell

TAMMY K PLUBELL

Assistant Attorney General

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EXHIBITS

Information	Exhibit 1
Pre-Trial Agreement	Exhibit 2
Order Deferring Imposition of Sentence	Exhibit 3
Initial Appearance on PV Hold	Exhibit 4
Petition to Revoke Deferred Sentence	Exhibit 5
Bench Warrant	Exhibit 6
Minutes of Initial Appearance on Out-of-Jurisdiction Warrant	Exhibit 7
Order Revoking Deferred Sentence.....	Exhibit 8
Presentence Investigation Report (Confidential)	Exhibit 9

CERTIFICATE OF SERVICE

I, Tammy K Plubell, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 07-15-2024:

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Electronically signed by Janet Sanderson on behalf of Tammy K Plubell
Dated: 07-15-2024