AUSTIN KNUDSEN
Montana Attorney General
BRAD FJELDHEIM
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-5240
brad.fjeldheim@mt.gov

COUNSEL FOR RESPONDENT

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0500

A.Z.,

Petitioner,

v.

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY, HON. HOWARD F. RECHT, Presiding,

Respondent.

ATTORNEY GENERAL'S RESPONSE TO PETITION FOR WRIT OF SUPERVISORY CONTROL

In compliance with this Court's September 3, 2024 order, and M. R. App. P. 14(3), the State of Montana responds to Petitioner A.Z.'s Petition for Writ of Supervisory Control.

BACKGROUND

On March 6, 2023, the State initiated Ravalli County Cause No. DJ 23-6 with a youth detention order for A.Z. regarding allegations of felony sexual intercourse without consent (SIWOC), felony intimidation, and misdemeanor partner family member assault (PFMA). (Pet'r's Ex. 1; Resp't's App. A.) During a hearing on March 8, 2023, the State informed the district court that it had not decided if it would file a petition, and the district court released A.Z. with a no contact order for the victim and her family. (Pet'r's Ex. 2.) On March 13, 2023, the State filed a motion to revoke A.Z.'s release. (Resp't's App. B.) After a hearing, the district court restricted A.Z.'s release to G.P.S.-monitored house arrest and restricted his electronic access. (Pet'r's Ex. 3.)

On May 3, 2023, the State filed a Motion for Leave to File an Information in DC 23-85 with its intent to charge A.Z. as an adult with felony SIWOC. (Pet'r's Ex. 4; Resp't's App. E.) By statute, the State had to file the SIWOC charge in district court, rather than the pending youth court matter (DJ 23-6), because A.Z. was 17 years old when he committed the charged offense. Mont. Code Ann. § 41-5-206(2). The district court granted the State's motion, and the State filed an Information charging SIWOC. (Resp't's Apps. F-G.)

In its motion for leave, the State had also moved for an order to transfer two non-enumerated offenses to the district court: misdemeanor PFMA and felony false

reports to a peace officer. (Pet'r's Exs. 4, 18.) The parties agreed to keep DJ 23-6 open until the district court addressed the State's request. (Resp't's App. H.) On September 20, 2023, the district court terminated A.Z.'s house arrest and ordered the two non-enumerated offenses to be handled in youth court. (Pet'r's Ex. 6.) To continue with these charges, the State had to file a delinquent youth petition in DJ 23-6, which it did on October 4, 2023. (Pet'r's Ex. 8.)

The SIWOC charge remained in DC 23-85 until the district court transferred it to youth court at the end of a two-day transfer hearing on May 16, 2024. (Resp't's Apps. I-J.) In its written order, the district court found the factors in Mont. Code Ann. § 41-5-206(3) required the transfer, citing *State v. Johnson*, 2023 MT 167, 413 Mont. 202, 534 P.3d 676. (Resp't's App. K.) After the hearing, the State dismissed the petition in DJ 23-6 and filed a petition in DJ 24-18 to pursue only the SIWOC charge in youth court. (Pet'r's Exs. 17, 19; Resp't's Apps. D, L.)

In DJ 24-18, the State charged A.Z. as a delinquent youth with felony SIWOC, in violation of Mont. Code Ann. § 45-5-503(1) and (2). (Pet'r's Ex. 19.) The State alleged that A.Z.'s date of birth was August 17, 2005, the victim's date of birth was April 7, 2008, and that the victim was 14 years old on the date of the alleged conduct and incapable of consent. (*Id*.) The State included the following allegation in its affidavit in support of its motion for leave to file petition:

> On March 4, 2023, Sergeant Gassett met with Youth and his mother. Youth admitted to engaging in sexual intercourse with Youth 2

> in his Ford Explorer at the Kiwanis River Park. Youth claimed that it had occurred one time, and admitted that he knew Youth 2's age. Youth further admitted that he knew the age difference between Youth and Youth 2 was "a problem." Youth admitted that a three month supply of birth control had been purchased, claiming Youth 2 purchased the pills using Youth's phone and debit card, and had them delivered to Youth's residence. Youth retrieved the birth control pills from his truck's glove box, and turned them over to Sergeant Gassett. Youth further identified his Snapchat username, which was the username Sergeant Gassett observed in the Snapchat messages with Youth 2.

(*Id*.) A.Z. denied the allegations, and the district court scheduled a three-day jury adjudication hearing. (Resp't's Apps. M-N.)

On June 21, 2024, A.Z. filed a motion to suppress the statements he made on March 4, 2023, based on his right against self-incrimination and the increased protections for youth in Mont. Code Ann. § 41-5-331. (Pet'r's Ex. 20.) In its response, the State disputed A.Z.'s assertions and argued A.Z. waived his rights prior to talking with the officer. (Pet'r's Ex. 21.) On July 16, 2024, the district court held a hearing on the motion. (Resp't's App. O.) The State provided testimony from the investigating officer and admitted a Youth Waiver of Rights form signed by A.Z. and a recording of the interview. (*Id*.)

After the hearing and supplemental briefing from both parties, the district court denied A.Z.'s motion on August 1, 2024. (Pet'r's Exs. 22-24; Resp't's App. O.) In its order, the district court made the following factual findings:

> On March 4, 2023, E.S., the victim who was at the time fourteen years of age, reported to Sergeant Jarin Gassett that the

> Defendant [A.Z.], then age seventeen, sexually assaulted her. That same night, close to 11 p.m., Sergeant Gassett went to [A.Z.]'s address to interview him. [A.Z.]'s residence of record is the same address as his grandmother, Susan Duncan. When Sergeant Gassett arrived and introduced himself, Duncan let him inside. After Sergeant Gassett informed [A.Z.] and Duncan as to why he was there, Duncan identified herself as [A.Z.]'s guardian.
>
> Sergeant Gassett informed [A.Z.] why he was there and confirmed [A.Z.]'s age. Sergeant Gassett also told [A.Z.] that, because [A.Z.] was seventeen, he had the right to have his guardian or parent notified and present during questioning, and he also had the right to waive having his parents/guardian notified and present. [A.Z.] indicated he would "prefer not to" have his parents notified and present. Sergeant Gassett verbally advised [A.Z.] of all his rights. [A.Z.] affirmed he understood his rights when Sergeant Gassett asked if he understood. [A.Z.] also read and signed a "Youth Waiver of Rights" form which reiterated the rights that had just been read to him—including the right regarding the parent or guardian notified. Sergeant Gassett then took [A.Z.]'s voluntary statement, and Duncan remained in the room the entire time [A.Z.] was questioned.

(Pet'r's Ex. 24 at 1-2.)

The district court identified A.Z.'s constitutional and statutory rights pursuant to Mont. Code Ann. § 41-5-331. (*Id*. at 3-8.) However, based on the officer's testimony, the interview recording, and A.Z.'s written waiver, the district court found A.Z. waived those rights prior to speaking with the officer and denied his motion. (*Id*.) The district court explained:

> Sergeant Gassett immediately informed [A.Z.] of his rights, including his right to notify his parents, *which [A.Z.]waived*. Sergeant Gassett did not interview [A.Z.] or discuss anything of substance before advising [A.Z.] of his rights. Because [A.Z.] waived his rights to notify his parents, along with his other *Miranda* rights, there was no improper interrogation. Additionally, [A.Z.] did not provide any

> testimony or evidence showing [A.Z.] failed to understand his rights or was not competent to waive his rights.

(*Id*. at 8 (emphasis in original).)

Because A.Z. validly waived his rights, the district court found it unnecessary to determine whether A.Z.'s grandmother met the statutory definition of "guardian, or legal custodian" in Mont. Code Ann. § 41-5-331(1)(b). (Pet'r's Ex. 24 at 8-9.) The district court noted, however, "the abundance of caution Sergeant Gassett took in including Duncan [A.Z.'s grandmother] in the process," which the law did not require him to do. (*Id*.) The district court explained that "Sergeant Gassett had every reason to believe Duncan was the guardian of [A.Z.]," and the law did not require him to investigate it further. (*Id*.) It continued:

> First, [A.Z.]'s residence of record is Duncan's address; second, she affirmatively identified herself as his guardian; and third, she signed the waiver as well, fully knowing Sergeant Gassett was there to interview [A.Z.] regarding a criminal matter. Even though Sergeant Gassett did not need to involve Duncan after [A.Z.] waived his right to notify his parents/guardian, as well as his other *Miranda* rights, Duncan was involved and aware of everything that was occurring, thus further providing an additional protection of [A.Z.]'s rights.

(Pet'r's Ex. 24 at 9.)

On August 22, 2024, A.Z. filed a petition for writ of supervisory control with this Court challenging the district court's order and requesting a stay of the trial court proceedings. On September 3, 2024, this Court stayed the proceedings and

granted the State an opportunity to respond. The district court vacated the jury adjudication hearing. (Resp't's App. P.)

ARGUMENT

I. The standard for supervisory control

This Court has supervisory control over all other courts in Montana and may, on a case-by-case basis, supervise another court through a writ of supervisory control. *Tipton v. Mont. Thirteenth Judicial Dist. Court*, 2018 MT 164, ¶ 9, 392 Mont. 59, 421 P.3d 780 (citing Mont. Const. art. VII, § 2(2); M. R. App. P. 14(3)). Supervisory control is an extraordinary remedy, appropriate when the normal appeal process is inadequate, when the case involves purely legal questions, and: (1) the lower court is proceeding under a mistake of law and is causing a gross injustice; (2) constitutional issues of statewide importance are involved; or (3) the lower court has granted or denied a motion for substitution of the judge in a criminal case. *Tipton*, ¶ 9. This Court is reluctant to exercise the extraordinary remedy of supervisory control. *Potter v. District Court of the Sixteenth Judicial Dist.*, 266 Mont. 384, 388, 880 P.2d 1319, 1322 (1994).

II. A.Z. does not raise a purely legal question, and he fails to show why the normal appeal process is inadequate.

A.Z.'s petition is not appropriate for a writ of supervisory control because the case does not involve a purely legal question. *See Tipton*, ¶ 9. A.Z. asserts the district court incorrectly interpreted and applied Mont. Code Ann. § 41-5-331, but his argument is wholly based on his disagreement with the district court's express factual findings in its order denying A.Z.'s motion to suppress. The district court found:

> Sergeant Gassett also told A.Z. "that, because [A.Z.] was seventeen, he had the right to have his guardian or parent notified and present during questioning, and he also had the right to waive having his parents/guardian notified and present."; and
>
> [A.Z.] also read and signed a "Youth Waiver of Rights" form which reiterated the rights that had just been read to him—including the right regarding the parent or guardian notified.

(Pet'r's Ex. 24 at 2.)

In contradiction to these findings, A.Z. repeatedly asserts that Sergeant Gassett did not inform him of his right to have his parent or guardian notified and present for the interview. (Pet. at 8, 12, 14, 16-17.) This Court cannot grant relief on supervisory control based on A.Z.'s factual disagreement with the district court. *See St. James Healthcare v. Mont. Second Jud. Dist. Ct.*, OP 24-0377, 2024 Mont. LEXIS 717, 2024 WL 3274001, *6 (July 2, 2024) ("Questions of fact are not susceptible to review on supervisory control.") (citing

cases). Moreover, A.Z. has failed to provide anything in his exhibits to substantiate his contradictory allegations. *See Cooper v. Mont. Sixth Jud. Dist. Ct.*, 2024 Mont. LEXIS 397, *3, 417 Mont. 550, 550 P.3d 778 ("The burden of persuasion is on the petitioner to convince the Court to issue a writ."). This Court should deny A.Z.'s petition outright for his failure to meet the pleading requirements. *See id*.; M. R. App. P. 14(5)(iv) (a petitioner must provide the exhibits "necessary to make out a prima facie case or to substantiate the petition or conclusion or legal effect").

The writ of supervisory control is limited to purely legal questions that render the normal appeal process inadequate due to factors of "urgency or emergency." M. R. App. P. 14(3). A.Z.'s unsupported mischaracterization of the facts does not support an urgent premature review by this Court, and he has failed to develop any other basis to show the writ is immediately necessary. *See id*.; M. R. App. P. 14(3). As this Court has explained, it "will not allow supervisory control to substitute for ordinary appeal at the convenience of the parties and will generally exercise it '[o]nly in the most extenuating circumstances.'" *Case v. Mont. Third Jud. Dist. Ct.*, 2022 Mont. LEXIS 198, *2, 408 Mont. 542, 507 P.3d 142 (quoting *State ex rel. Ward v. Schmall*, 190 Mont. 1, 4, 617 P.2d 140, 141 (1980)).

Rather, A.Z.'s argument highlights the need for a direct appeal. In its role as the fact-finder, the district court held a hearing on A.Z.'s motion to suppress, considered the evidence presented, and made factual findings based on that

evidence to support its order denying A.Z.'s motion. *See BNSF Ry. Co. v. Cringle*, 2012 MT 143, ¶ 16, 365 Mont. 304, 281 P.3d 203 (this Court defers to a trial court's fact-finding role and reviews factual findings for clear error on direct appeal). A.Z. has not provided any of the evidence the district court relied on to support its factual findings, and it is inappropriate to do so in this purely legal proceeding. *See* M. R. App. P. 14(3); *Quen v. Eleventh Judicial Dist. Court*, 394 Mont. 387, 432 P.3d 699 (2018) (denying a petition for a writ of supervisory control so the issue could be addressed on direct appeal with a more developed record).

This Court should deny A.Z.'s petition because he has wholly failed to meet the threshold requirements. *See* M. R. App. P. 14(3). The proper course is to address A.Z.'s claim with the normal appeal process where this Court can assess the district court's factual findings for clear error based on a complete record.

III. A.Z. has failed to show that the district court is proceeding under a mistake of law that is causing a gross injustice.

The only legal question A.Z. supports with any authority is the district court's interpretation and application of Mont. Code Ann. § 41-5-331. The statute provides:

> (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a

delinquent youth or a youth in need of intervention, the following requirements must be met:

> (a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.
>
> (b) The investigating officer, juvenile probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

> (a) when the youth is 16 years of age or older, the youth may make an effective waiver subject to the provisions of 41-5-333(2)[.]

Id.[1]

The district court considered all the relevant statutory and constitutional authority. (Pet'r's Ex. 24 at 3-5 (citing Mont. Code Ann. § 41-5-331; *Miranda v. Arizona*, 384 U.S. 436 (1966); *In re S.M.S*, 2010 MT 18, ¶ 19, 355 Mont. 102, 225 P.3d 781; *State v. McKee*, 2006 MT 5, ¶ 27, 330 Mont. 249, 127 P.3d 445; *State v. Olson*, 2003 MT 61, ¶ 13, 314 Mont. 402, 66 P.3d 297; *State v. Hill*, 2000 MT 308, ¶ 37, 302 Mont. 415, 14 P.3d 1237).) It immediately concluded the

[1] In his petition, A.Z. omitted the waiver provision in Mont. Code Ann. § 41-5-331(2)(a). (Pet. at 14.)

interview "was a custodial interrogation, and thus [A.Z.] was entitled to his *Miranda* warnings." (Pet'r's Ex. 24 at 6.) Contrary to A.Z.'s argument, the district court never questioned whether A.Z.'s rights applied, including A.Z.'s right to parental notification.

The district court also acknowledged, however, A.Z.'s ability to waive those rights pursuant to Mont. Code Ann. § 41-5-331(2)(a). The district court explained:

> [A.Z.] was seventeen years old at the time. Sergeant Gassett read [A.Z.] his *Miranda* rights, and [A.Z.] also signed a waiver regarding his rights. [A.Z.] affirmatively responded that he would "prefer not to" notify his parents. Therefore, [A.Z.] waived his right to notify his parents per Mont. Code Ann. § 45-1-331(2)(a).

(Pet'r's Ex. 24 at 6.) The district court correctly supported its conclusion with *S.M.S.*, ¶¶ 17-22, where this Court affirmed a 16-year-old youth's waiver of his *Miranda* rights as allowed in Mont. Code Ann. § 41-5-331(2)(a). In that case, this Court reviewed, on direct appeal, the totality of the circumstances supporting a voluntary waiver and held the district court's factual findings were not clearly erroneous and its legal conclusions were correct. *Id*. Like the facts in *S.M.S.*, the district court reiterated Sergeant Gassett's thorough advisement of rights to A.Z. and A.Z.'s affirmative waiver.

A.Z. argues this Court's 2010 decision in *S.M.S.* is inapplicable because the Legislature's 2009 amendment to Mont. Code Ann. § 41-5-331(2)(a) added the phrase "subject to the provisions of 41-5-333(2)." But A.Z. does not provide the

cross-referenced statute and fails to inform this Court that it has no bearing on his waiver in this case. (Pet. at 17-18.) Montana Code Annotated § 41-5-333(2) provides:

> (2) A youth must be represented by counsel at a probable cause hearing unless the right to counsel is waived after consultation with an attorney prior to the hearing.

The statute limits a youth's ability to waive the right to counsel during a probable cause hearing. *Id*. It provides no basis to ignore A.Z.'s statutory waiver rights in Mont. Code Ann. § 41-5-331(2)(a).

A.Z.'s only challenge is to the district court's interpretation and application of Mont. Code Ann. § 41-5-331. The district court did not rely on *S.M.S.* to interpret Mont. Code Ann. § 41-5-331(2)(a). It relied on *S.M.S.* to support A.Z.'s voluntary waiver of his rights based on the totality of the circumstances as allowed by Mont. Code Ann. § 41-5-331(2)(a), which irrefutably exists. A.Z. does not challenge the district court's thorough statement of the law regarding voluntary waivers, and this Court, in *S.M.S.*, ¶¶ 15-22, considered these same legal principles to affirm a 16-year-old youth's waiver of his *Miranda* rights pursuant to Mont. Code Ann. § 41-5-331(2)(a). The district court is not proceeding under a mistake of law for relying on a case that applied the same authority that applied to A.Z.'s motion to suppress.

A.Z.'s reliance on *McKee* illustrates his overt refusal to acknowledge the district court's factual findings. (Pet. at 16-18.) The district court correctly distinguished the circumstances in *McKee* where "the youth signed a written waiver of his right against self-incrimination and his right to counsel, but he did not waive his right to parental notification." (Pet'r's Ex. 24 at 7 (citing *McKee*, ¶ 26).) This is not "the exact situation that occurred here" as A.Z. asserts. (Pet. at 17.) Here, Sergeant Gassett notified A.Z. of his right to parental notification and presence, A.Z. orally responded that he would "prefer not to" have his parents notified, and A.Z. read and signed a waiver form confirming his waiver of the right to parental notification. (Pet'r's Ex. 24 at 2.) A.Z. misstates the facts, and he cannot rely on his unsupported assertions to manufacture a legal error.

In addition to misstating the facts, A.Z. ignores the law in maintaining that his grandmother does not meet the statutory definitions of guardian or legal custodian. (Pet. at 15-16.) The district court correctly concluded that this statutory determination was irrelevant once A.Z. validly waived his right. *See* Mont. Code Ann. § 41-5-331; *McKee*, ¶ 26 (holding the parental notification right in Mont. Code Ann. § 41-5-331(1)(b) could only be waived by the youth, not the parent, guardian, or legal custodian). As the district court explained, the law did not require Sergeant Gassett to take any further action prior to interviewing A.Z. (Pet'r's Ex. 24 at 8-9.) A.Z. ignores the law and to grant him relief this Court

would have to do exactly what he accuses the district court of—go "to extraordinary lengths to disregard the language of the statutes and to rely on case law that did not address the same issue." (Pet. at 17.)

With no law or facts to show that the district court is proceeding under a mistake of law, A.Z. cannot show continuing with the trial court proceedings is causing a gross injustice. *See* M. R. App. P. 14(3)(a). Sergeant Gassett did not ignore A.Z.'s rights or coerce a waiver. *See Evans v. Montana Eleventh Judicial Dist. Court*, 2000 MT 38, ¶¶ 7-16, 298 Mont. 279, 995 P.2d 455 (finding it grossly unjust to subject a 14-year-old to trial when two officers separated the youth from his mother at the police station, refused him contact with his mother, and obtained a *Miranda* waiver and confession after two and one-half hours). Rather, the district court noted, "the abundance of caution Sergeant Gassett took in including [A.Z.'s grandmother] in the process" even though it was not legally necessary. (Pet'r's Ex. 24 at 9.) Sergeant Gassett provided additional protections for A.Z.'s rights by having the grandmother also sign the waiver form before the interview and allowing her to remain with A.Z. throughout the questioning. (*Id*.)

When all the relevant law is considered with the district court's express factual findings, it is clear that A.Z. has failed to meet the required showing that the district court is proceeding under a mistake of law causing a gross injustice. *See Tipton*, ¶ 9. This Court should deny A.Z.'s petition.

IV. A.Z. is not entitled to a writ of supervisory control based on his broad unsupported assertions that this case involves constitutional issues of state-wide importance.

A.Z. does not address any constitutional issues of state-wide importance in his argument. In his standard of review and conclusion, A.Z. attributes various nefarious intentions to the State and baselessly refers to lawless district court judges. (Pet. at 11-12, 18-19.) But he does not provide factual support for any of it, and he does not cite any legal authority.

A.Z. references due process (Pet. at 11), but the mere reference of the phrase does not support a constitutional issue of state-wide importance. Moreover, a review of the full procedural history, which A.Z. muddles, shows every charging decision the State made was required by statute, a district court order, or the law of this Court. *See* Mont. Code Ann. § 41-5-206; *Johnson*, ¶¶ 11-28. A.Z. has received every procedural protection the law requires, and he has failed to support any argument for relief under M. R. App. P. 14(3)(b). This Court has long held that it does not research claims or develop legal analysis for a party's position, *State v. Cybulski*, 2009 MT 70, ¶ 13, 349 Mont. 429, 204 P.3d 7, and A.Z.'s mere reference to the standard in M. R. App. P. 14(3)(b) does not support the extraordinary remedy of supervisory control.

CONCLUSION

A.Z. has failed to meet the threshold requirements for a writ of supervisory control or otherwise justify the extraordinary remedy that he requests. This Court should deny his petition.

Respectfully submitted this 30th day of September, 2024.

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: */s/ Brad Fjeldheim*
BRAD FJELDHEIM
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief 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 3,885 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Brad Fjeldheim
BRAD FJELDHEIM

CERTIFICATE OF SERVICE

I, Brad Fjeldheim, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 09-30-2024:

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

William E. Fulbright (Govt Attorney)
205 Bedford St #C
Hamilton MT 59840
Representing: State of Montana
Service Method: eService

Cierra Leeann Anderson (Attorney)
211 N Higgins Ave
Suite 401
Missoula MT 59802
Representing: A. Z.
Service Method: eService

Howard F. Recht (District Court Judge)
205 Bedford St, Suite A
Hamilton MT 59840
Service Method: eService
E-mail Address: Howard.Recht@mt.gov

Electronically signed by LaRay Jenks on behalf of Brad Fjeldheim
Dated: 09-30-2024