

AUSTIN KNUDSEN
Montana Attorney General
CARRIE GARBER
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
carrie.garber@mt.gov

COUNSEL FOR PLAINTIFF AND APPELLEE

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0522

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SEAN OWENS SHAMBLIN,

Defendant and Appellant.

NOTICE OF CONCESSION

The Attorney General's Office, on behalf of the State of Montana, and with the consent of the Missoula County Attorney's Office, submits the following Notice of Concession. Without agreeing to all the arguments advanced by Appellant Sean Shamblin, representing himself *pro se*, the State concedes that the

district court's order on appeal should be reversed and the case should be remanded to the justice court for correction of the sentence. On remand, the justice court should strike the handwritten words "Retain for six month[s]" from the sentencing order and delete the two conditions and related handwritten words below:

☒ Complete Alive at 25 class within 3 months, call (406)329-1500 to sign up—must be after the date of this sentence

....

☒ Other: 20 hour[s] of community service w/ the Missoula Community Service Program 60 days to complete 8/11/24

(Doc. 2 at 6.) Shamblin does not object to the instant concession.

BACKGROUND

On May 4, 2024, a peace officer with the Montana Highway Patrol cited Shamblin for the offense of Speeding, under Mont. Code Ann. 61-8-303(1)(a), alleging Shamblin had operated a motor vehicle on an urban interstate in excess of the daytime speed limit of 65 miles per hours (mph) by going 95 mph. (Sealed Doc.) The citation notified Shamblin that he was required to appear in Missoula County Justice Court on or before 1:30 p.m. on May 13, 2024. Shamblin failed to appear on or before that date, after which the justice court sent Shamblin a letter

warning him that, if he continued to fail to appear, he faced the imminent suspension of his driver's license. (Doc. 2 at 7.)

Shamblin appeared in justice court on June 11, 2024, attempted to plead “no contest,” and, following a discussion between Shamblin and the judge, pled guilty. (Exhibit 1, CD labeled Initial Appearance 6/11/2024.) The justice court sentenced Shamblin by imposing a \$120 fine and two conditions of sentence: (1) complete the Alive at 25 program within the 3 month period after sentencing, and (2) complete 20 hours of community service with the Missoula County Community Service Program within the 60-day period after sentencing. The justice court ordered a payment plan regarding the fine, which required Shamblin to pay \$25 per month on or before the 11th day of each month after sentencing, with payment in full required by December 10, 2024. The justice court informed Shamblin that it would retain jurisdiction over his sentence for six months to ensure he paid the fine in full and completed the conditions of sentence, reflected by the handwritten words “Retain for six month[s]” on the sentencing order. (Doc. 2 at 6.)

Shortly after sentencing, Shamblin appealed to the Fourth Judicial District Court. Following briefing, the district court affirmed the sentence imposed in the justice court, denied the relief Shamblin requested, and ordered the case be remanded to the justice court for further proceedings. (Doc. 11.)

On September 3, 2024, Shamblin filed a notice of appeal to the Montana Supreme Court and moved this Court to stay the sentence imposed by the justice court. (Docs. 13, 14.) On September 25, 2024, the Court issued an order stating “the imposed fine is automatically stayed, pursuant to § 46-20-204(3), MCA[,]” but further stating, “There is no other statutory provision to stay Shamblin’s other two, required sentence conditions, namely completion of the Alive at 25 court and the twenty hours of community service.” (Doc. 17 at 1.) The order further stated, “Shamblin must comply with the other two required sentence conditions[,]” and “Shamblin’s Motion for a Stay of Sentence of the Justice Court is DENIED.” (*Id.* at 2.)

DISCUSSION

On appeal, Shamblin argues that “[t]he Justice Court exceeded its statutory authority when it ordered [him] to complete sentencing conditions and ‘retained jurisdiction’ on a noncriminal, speeding ticket.” (Appellant’s Br. at 7.) The State concedes that the justice court exceeded its statutory authority when it ordered Shamblin to complete two sentencing conditions and retained jurisdiction over his noncriminal speeding ticket.

Montana Code Annotated Title 61, chapter 8, regulates vehicle, pedestrian and bicycle traffic. Montana Code Annotated § 61-8-104 provides that “[i]t is

unlawful and, *unless otherwise declared in this chapter with respect to particular offenses*, it is a misdemeanor punishable as provided in 61-8-711 for any person to do any act forbidden or fail to perform any act required in this chapter.” (Emphasis added.) Montana Code Annotated § 61-8-711(1) provides that “[i]t is a misdemeanor for a person to violate any of the provisions of this chapter unless the violation is declared to be a felony.”

During the June 1999 Special Session, the Legislature amended Mont. Code Ann. § 61-8-725 to “decriminalize” violations of Mont. Code Ann. § 61-8-303.

Montana Code Annotated § 61-8-725(2)(a) provides:

A violation of a speed limit imposed pursuant to 61-8-303 is *not a criminal offense* within the meaning of 3-1-317 [user surcharge for court information technology], 45-2-101 [definition of misdemeanor under Title 45], 46-18-236 [imposition of surcharge], 61-8-104 [definition of misdemeanor under Title 61, chapter 8], and 61-8-711 [penalties for violation of other offenses under Title 61, chapter 8]

(Emphasis added.) By expressly excluding violations of Mont. Code Ann. § 61-8-303 from the definition of a criminal offense, the Legislature excluded speeding violations from the application of Title 46, which “governs the practice and procedure in all *criminal* proceedings[.]” Mont. Code Ann. § 46-1-103(1) (emphasis added). It is only in a criminal case, “[w]hen deferring imposition of sentence or suspending all or a portion of execution of sentence” under § 46-18-201(4), that the Legislature vested courts with the authority to impose “any other

reasonable restrictions or conditions considered necessary for rehabilitation or the protection of the victim or society” (Mont. Code Ann. § 46-18-201(4)). A “sentence” is defined in relevant part as “the judicial disposition of a *criminal* proceeding[.]” Mont. Code Ann. § 46-1-202(26) (emphasis added).

In its decision *In re Expungement of Misdemeanor Records of Dickey*, 2021 MT 3, 402 Mont. 409, 478 P.3d 821, this Court held that, because a speeding violation under § 61-8-303 “is not a crime, it cannot be a misdemeanor as the term is defined under Montana statute.” *Dickey*, ¶ 15. The Court indicated that a speeding violation would be a civil violation and therefore not subject to the Expungement Act, which applies only to criminal violations. *Id.* The Court noted that, although it had described speeding violations as misdemeanors in some of its decisions following the Legislature’s 1999 amendments to Mont. Code Ann. § 61-8-725(2)(a), the erroneous description “does not undermine the statute’s clear provision to the contrary.” *Dickey*, § 16. The penalty for a civil violation is strictly confined to the statutory penalty expressly provided by the Legislature, which means that under Mont. Code Ann. § 61-8-725, the penalty for speeding consists only of fines.

///

CONCLUSION

The State concedes that this case should be remanded to the justice court with instructions to strike the two conditions and the language retaining jurisdiction.

Respectfully submitted this 4th day of February, 2025.

AUSTIN KNUDSEN
Montana Attorney General
Justice Building
P.O. Box 201401
Helena, MT 59620-1401

By: /s/ Carrie Garber
CARRIE GARBER
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Carrie L. Garber, hereby certify that I have served true and accurate copies of the foregoing Notice - Concession to the following on 02-04-2025:

Matthew C. Jennings (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Sean Owens Shamblin (Appellant)
12212 Hawk Lane
Clinton MT 59825
Service Method: Conventional

Electronically signed by Janet Sanderson on behalf of Carrie L. Garber
Dated: 02-04-2025