DA 22-0663

IN THE SUPREME COURT OF THE STATE OF MONTANA

2025 MT 25

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSEPH EUGENE GARCIA,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. DDC-18-170
Honorable John W. Parker, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Karl Pitcher, Attorney at Law, Missoula, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Thad Tudor, Assistant Attorney General, Helena, Montana

Joshua Racki, Cascade County Attorney, Michelle Levine, Stephanie Fuller, Deputy County Attorneys, Great Falls, Montana

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Submitted on Briefs: December 4, 2024

Decided: February 4, 2025

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Joseph Eugene Garcia (Garcia) appeals his designation as a tier level 2 sexual offender by the District Court in his sentence for felony sexual assault of an underage boy. Garcia contends the District Court considered evidence beyond that authorized by statute in determining that he posed a moderate, as opposed to low, risk of re-offense upon parole for purposes of the designation. We address the following issue:

> *Did the District Court err by designating Garcia as a tier level 2 sexual offender under § 46-23-509(2), MCA?*

¶2 We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 In March 2020, the State filed an Information charging Garcia with two counts of sexual intercourse without consent and two counts of sexual abuse of children, alleging he had repeatedly raped an underage boy, C.C., over the course of five years, when C.C. was between the ages of 9 and 14. The State's listed trial witnesses included Sergeant Kaylin Cunningham (Sergeant Cunningham), who led the investigation into Garcia's crimes. On the day set for the jury trial, Garcia entered an *Alford* plea to a single amended charge, felony sexual assault under § 45-5-502, MCA.[1] In exchange for Garcia's plea to the amended charge, the State agreed to drop the original charges and recommend a sentence

[1] *See North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970); § 46-12-212(2), MCA. "An *Alford* plea allows a defendant to enter a guilty plea without acknowledging his guilt." *State v. Bristow*, 2023 MT 188, n.1, 413 Mont. 403, 537 P.3d 103.

of forty years, with twenty years suspended, but the agreement was silent regarding sex offender tier level designation.

¶4 Upon Garcia's plea entry, the District Court ordered completion of a presentence investigation (PSI) and a psychosexual evaluation (PSE), *see* § 46-18-111(1)(a), (b), MCA, and appointed Dr. Robert Page (Dr. Page) to perform the PSE. After submitting an initial evaluation report, Dr. Page submitted a supplemental report that included, in addition to all of the information provided in the first report, Dr. Page's consideration of victim C.C.'s disclosures and comments. Probation officer Tim Hides (Officer Hides) prepared the PSI.

¶5 Prior to sentencing, written victim impact statements were submitted by C.C. and C.C.'s mother. At the sentencing hearing, the State called four witnesses: Sergeant Cunningham, C.C.'s mother, Dr. Page, and Officer Hides. Sergeant Cunningham testified from her investigation, including her discussions with C.C., that Garcia had "numerous" cell phones in his closet and storage, which were "a hot commodity for kids" that were "given to kids oftentimes as kind of gifts" as a grooming strategy. Other gifts given by Garcia included electronic devices, clothing, and food. Sergeant Cunningham searched and found multiple items in Garcia's storage unit that C.C. recognized as having been used by Garcia, including a replica of genitalia, sex toys, lubricant, and a white board with a listing of names and birthdates of minor boys. C.C. told Sergeant Cunningham that he stayed with Garcia every other weekend, and that "it happened every time he stayed" with Garcia. C.C. reported that when he asked Garcia, "Am I the only person you do this to?" Garcia answered that he had done it with C.C.'s cousin, M.L., and showed C.C. pictures and video that Garcia said was of him (Garcia) having sex with M.L. Garcia also showed

C.C. pictures on Garcia's iPhone 5 of Garcia having sex with other young males, including a boy named J.L. Sergeant Cunningham testified that C.C. had traveled with Garcia to Las Vegas, Seattle, Missoula, Bozeman, Billings, Spokane, and Polson, as well as to various locations in Great Falls, and that she had discovered a number of uploaded YouTube videos of Garcia "[t]raveling the state" with other boys. Sergeant Cunningham read C.C.'s victim impact statement into the record and echoed C.C.'s concern that Garcia would pose a risk to children if paroled in the future. C.C.'s mother read her own victim impact statement into the record, and noted that her oldest son, K.M., "did tell me that [Garcia] had also abused him." C.C.'s mother said she was fearful Garcia would use time during incarceration to think of less detectable ways to continue to harm children, and that, "I believe if he does get out he will rape other children in the future."

¶6 Dr. Page reported to having prepared thousands of psychosexual evaluations over the course of 27 years. He recommended a tier level 1 sexual offender designation for Garcia, stating that the assessment scoring "places him within the low end of the moderate range." However, he noted the limitations of the risk assessment tools he administered, explaining in his supplemental report that "it is very important to identify that risk assessments are based only on research and comparisons between an individual and a large research group," and that some "individual variables" may not be considered at all "when scoring risk assessment instruments." He emphasized that, "[w]hile no previous convictions involving other victims of sexual abuse by Mr. Garcia appear to be on record, it is certainly evident that additional victims are likely. Again, this information cannot be

incorporated into a formal risk assessment calculation." Dr. Page testified under questioning by the prosecutor:

> Q: What was the summary of the sex offender risk assessment, starting on page seven, of the supplemental report?
>
> A: Sex Offender Risk Assessments have very limited utility and no predictive capabilities at all. They're used to compare the individual with thousands of other research subjects who have been known to reoffend and compare their traits that does not predict behavior. Unfortunately, we only have one predictor of behavior and that's history. . . .
>
> Q: What are you allowed to take into account regarding risk assessment?
>
> A: Only the point values associated with [certain] factors . . . . Those factors include charged or convicted past offenses, as well as a number of other factors, including age. . . .
>
> Q: So are you saying that you can only consider charged and convicted conduct?
>
> A: Correct.
>
> . . .
>
> Q: Are there other individual variables that are not considered when scoring risk assessment?
>
> A: Well, there's no items on the risk assessment [addressing] grooming tactics. . . . There are no items that suggest violence, use of violence. . . . some of the factors that we see in individual offenders typically don't, I mean, they may have qualifications for higher risk, but it's not noted in the risk assessment instruments. So we're limited to what we have on the risk assessments and stuff.
>
> Q: On page 8, you say, we must consider the number of offenses perpetrated against this victim [], as well as the number of years he was offended repeatedly by Mr. Garcia. Is that taken into account regarding your tier level recommendation?
>
> A: No. . . .

Q: You go on to say further evidence suggests he's at greater risk, I think, meaning Garcia's at greater risk even though some factors are not considered in the research groups?

A: Correct.

Q: Is that essentially recapping what you just said?

A: Yes, it is.

Q: And then how are we to weigh the coercive tactics including bribery, gifts, and grooming behavior?

A: Clinically they are considered a feature that's—that's utilized in treatment groups. But mostly the fact that when you have a person who is exercising manipulative tactics and trying to control the behavior of others or lack of behavior of others. It suggests premeditation, planning, copiability, and much more sophisticated means of achieving their goals of offending others.

When Dr. Page was asked by the prosecutor if the inclusion of these additional factors might have changed his recommendation for Garcia's sexual offender tier level designation, defense counsel objected. The District Court sustained the objection on the grounds that such speculation would go beyond the scientific constraints of the risk assessment tools, but later noted regarding the evidence necessary for sentencing that "the State has already developed a record that would justify them in arguing for a tier 2 designation," while "[t]he defense has an evidentiary basis through the doctor's report to seek a tier level one designation," and that "anything more is going to be cumulative under the Montana rules of evidence."

¶7 Officer Hides testified after Dr. Page, discussing the PSI and explaining that his report included results from Garcia's performance on the self-reported Montana Offender Re-entry and Risk Assessment (MORRA). Officer Hides offered that the MORRA "does

not really count" as an effective means of evaluating the risk of re-offense for sexual offenders because "MORRA is not designed for sexual offenders. It's not a design for DIU [sic] offenders. It's not designed for any type of a specialized case load, so we really don't even use it for the purposes of supervision." Thus, regarding the tier level 1 offender designation proposed in the PSI, Officer Hides explained that he deferred to Dr. Page's recommendation: "I leave that completely up to him." Garcia elected not to make a statement.

¶8 The District Court sentenced Garcia to a term of forty years in the Montana State Prison, with twenty years suspended, in accordance with the plea agreement, and designated Garcia as a tier level 2 sexual offender, stating, "The sentencing court is bound by the laws of Montana in [§ 46-23-509(2), MCA]. And I have considered the psychosexual evaluation report. I've also considered the statement by [C.C.'s mother], who is a victim under the statute." The District Court's tier level designation drew an objection from defense counsel, who stated: "I believe that the statute—and that's 46-23-509, MCA requires the Court to go along with what the sex offender evaluator endorses unless there's something obviously wrong with it." The District Court disagreed with the reading of the statute, and provided further explanation:

> So here's the reason that I did it. The [evidentiary] record today indicates extensive use of computer technology and phones through a course of conduct of grooming multiple victims. . . . And my logic is that since State versus Hill allows evidence of uncharged conduct and because we have an evidentiary record that shows that there were likely multiple victims systematically groomed through the use of extensive computer technology. The statute is not written in such a way to make the [psychosexual evaluation] mandatory upon the Court. It requires the Court to consider it and I have considered it. I am making a discretionary choice to deviate from

> it slightly. I agree with [defense counsel] there's some arguments not to go to a tier 3 designation on the evidentiary record we have today. . . . But it strikes me that under the plain language of the statute and the principles of statutory construction that the Court has the latitude to make additional discretionary findings beyond what's in the evaluation. Especially as Doctor Paige [sic] outlined his professional constraints.

¶9 This appeal followed.

STANDARD OF REVIEW

¶10 "The interpretation of a statute is a question of law reviewed de novo." *State v. Levine*, 2024 MT 169, ¶ 7, 417 Mont. 410, 553 P.3d 416. This Court reviews a district court's designation of a sexual offender tier level for abuse of discretion. *State v. Pine*, 2023 MT 172, ¶ 15, 413 Mont. 254, 548 P.3d 390 (citing *State v. Hill*, 2009 MT 134, ¶ 22, 350 Mont. 296, 207 P.3d 307). An abuse of discretion occurs where a trial court "acts arbitrarily without employment of conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice." *Pine*, ¶ 15.

DISCUSSION

¶11 Garcia challenges the sexual offender tier level designation adopted by the District Court in his sentence, contending that, while other evidence may be relied upon "to determine the appropriate overall sentence for the defendant," the provisions of § 46-23-509(2), MCA, "limit[] the information a court may rely upon in designating a sex offender" to one of the three offender categories. Garcia argues the District Court impermissibly relied on the testimony provided by Sergeant Cunningham from her investigation, including information about the contents of Garcia's storage unit, because testimony from a case investigator is not included within the three categories stated in the

statute. Noting the State's argument that a district court is free to consider the broad range of information before it when making its tier level designation, Garcia replies that, "[i]f the legislature intended the interpretation suggested by the State, it simply could have added the phrase 'or any other relevant evidence' to the end of § 46-23-509(2)(a)."

¶12 The statute provides as follows:

> (1) Prior to sentencing of a person convicted of a sexual offense, a sexual offender evaluator who has a license endorsement as provided for in 37-1-139 shall provide the court with a psychosexual evaluation report recommending one of the following levels of designation for the offender:
>
> (a) level 1, the risk of a repeat sexual offense is low;
>
> (b) level 2, the risk of a repeat sexual offense is moderate;
>
> (c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the sexual offender evaluator believes that the offender is a sexually violent predator.
>
> (2) Upon sentencing the offender, the court shall:
>
> (a) review the psychosexual evaluation report, any statement by a victim, and any statement by the offender;
>
> (b) designate the offender as level 1, 2, or 3; and
>
> (c) designate a level 3 offender as a sexually violent predator.

Section 46-23-509(1), (2), MCA.

¶13 "When interpreting a statute, our objective is to implement the objectives the legislature sought to achieve." *Montana Vending, Inc. v. Coca-Cola Bottling Co*., 2003 MT 282, ¶ 21, 318 Mont. 1, 78 P.3d 499 (citing *Western Energy Co. v. State*, 1999 MT 289, ¶ 11, 297 Mont. 55, 990 P.2d 767); *see also* § 1-2-102, MCA. "The legislative intent is to be ascertained, in the first instance, from the plain meaning of the words used." *Montana Vending, Inc*, ¶ 21 (citation omitted). The role of the judiciary is to "ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Section 1-2-101, MCA.

"Statutory construction is a 'holistic endeavor' and must account for the statute's text, language, structure, and object." *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 450 P.3d 898 (quoting *State v. Heath*, 2004 MT 126, ¶ 24, 321 Mont. 280, 90 P.3d 426). "Except where phrased in technical words and phrases that have acquired a peculiar legal meaning, statutory language must be construed in accordance with the plain meaning of the subject words and phrases in ordinary usage." *City of Great Falls v. Bd. of Comm'rs*, 2024 MT 118, ¶ 19, 416 Mont. 494, 549 P.3d 1158 (citing § 1-2-106, MCA) (internal quotations omitted). The interpretation of a statute should not lead to absurd results when a reasonable interpretation can avoid it. *City of Missoula*, ¶ 18.

¶14 About sentencing generally, we have held that "the Legislature intended to allow the sentencing court wide latitude in considering any information relevant to the treatment of the offender and the risk he or she poses to the victim or to other children in a community." *State v. Legg*, 2004 MT 26, ¶ 30, 319 Mont. 362, 84 P.3d 648. Further, we have specifically addressed the text of § 46-23-509, MCA, governing the designation of tier levels and quoted above, and explained that the statute "does not require the sentencing court to accept the recommendation of the sexual offender evaluation. The district court makes the designation in the exercise of its discretion." *Hill*, ¶ 42. Further, we have held that this statute "indicates that it is ultimately the decision of the sentencing court to determine which level a sexual offender will be assigned and *that the court may consider factors outside of the sexual evaluator's report* when making this determination." *Pine*, ¶ 30 (emphasis added). Thus, Garcia's objection to the effect that "46-23-509 requires the

Court to go along with what the sex offender evaluator endorses unless there's something obviously wrong with it," is not supported by our precedent.

¶15 The statute requires a licensed sexual offender evaluator to "provide" a report to the court "recommending" a tier level designation for the offender. Section 46-23-509(1), MCA. A recommendation is a "specific piece of advice about what to do," but is not binding. *Recommendation*, Black's Law Dictionary (12th ed. 2024). The sentencing court must "review" the PSE, as well as "any statement by a victim," and "any statement by the offender." Section 46-23-509(2)(a), MCA. Thereafter, the district court is to "designate the offender as level 1, 2, or 3." Section 46-23-509(2)(b), MCA. The act of making a designation as to sexual offender tier level is, therefore, inherently separate from the court's receipt of the evaluator's recommendation and its review of materials described in § 46-23-509(2)(a), MCA. The structure of the statute reinforces the distinction between the evaluator's duties and the court's duties, with subpart (1) dealing exclusively with the evaluator and subpart (2) pertaining only to the district court. Nothing in the text requires that the district court adopt the recommendation of the sexual evaluator; the mandatory language encompasses what information must be provided and reviewed, and there is no prohibitory language foreclosing the court's consideration of further information. As the State notes, Garcia's interpretation would lead to the absurd result that the district court would be precluded from considering information within the PSI about this very offense, as well as other conduct relevant to designation of the appropriate sexual offender tier level. In *Legg*, we rejected that proposition. *Legg*, ¶¶ 32-33.

¶16 Here, the District Court satisfied the statute, first by receiving the PSE and victim impact statements before sentencing. The victim impact statements were read into the record at the sentencing hearing. Garcia elected not to provide a statement, § 46-23-509(2)(a), MCA, and thus the District Court was statutorily obligated to review only the PSE and victim impact statements. The District Court confirmed its review of the information by making references to C.C.'s victim impact statement and by expressly stating: "I have considered the psychosexual evaluation report. I've also considered the statement by [C.C.'s mother], who is a victim under the statute." Thus, the District Court satisfied the statutory requirements under § 46-23-509(2)(a), MCA, before designating Garcia's sexual offender tier level.

¶17 Despite Garcia's argument that the District Court heightened his sexual offender tier level designation due to Sergeant Cunningham's testimony alone, we note the additional evidence before the District Court supporting its deviation from Dr. Page's recommendation. The evidence from the investigation, including many items associated with grooming young victims, testimony about pictures and videos that were described as depicting unlawful activity, Garcia's many road trips with C.C. and other young boys, and victim impact statements indicating Garcia had abused other children, supported the District Court's tier level designation. The victim, victim's family, and Sergeant Cunningham all expressed great concern about Garcia's inclination and capability to hurt children in the future, and both Dr. Page and Officer Hides testified to the limitations of their assessment tools to capture data relevant to Garcia's risk of re-offense, including uncharged offenses and the use of grooming tactics. Based on the information before it,

the District Court found that Garcia posed a moderate risk of re-offense and designated him a tier level 2 sexual offender. The District Court correctly interpreted the statute, and its designation was supported by substantial evidence. There was no abuse of discretion.

¶18 We affirm.

/S/ JIM RICE

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ INGRID GUSTAFSON