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CITY OF WHITEFISH,

Plaintiff and Appellee,

v.

THOMAS CURRAN,

Defendant and Appellant.

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**BRIEF OF APPELLANT**

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On Appeal from the Montana Eleventh Judicial District Court,  
Flathead County, the Honorable Danni Coffman, Presiding

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## **STATEMENT OF THE ISSUE**

Whether Mont. Code Ann. § 61-8-1007(2)(a)(i), the current sentencing statute for DUI *per se* (previously Mont. Code Ann. § 61-8-722(1) (2019)), is facially unconstitutional because it mandates imposition of a \$600 fine, making the suspended fine imposed as part of Thomas Curran's sentence in Whitefish Municipal Court illegal?

## **STATEMENT OF THE CASE**

On August 11, 2020, Curran pleaded guilty to Operating a Motor Vehicle with an Alcohol Concentration of 0.08 or Greater (DUI *per se*), in violation of Mont. Code Ann. § 61-8-406(1)(a) in Whitefish Municipal Court. (8/11/2020 Min. 3:32.)

Mr. Curran's plea agreement called for a \$685 fine. (D.C. Doc. 0.14.) At the time of sentencing, Mr. Curran was a seventy-three year old man whose sole source of income was social security disability. (8/11/2020 Min. 11:15-11:37.) Mr. Curran requested that the court suspend the fine due to his "bleak" financial circumstances. (8/11/2020 Min. 2:22-2:35.) The judge conducted an ability-to-pay inquiry (8/11/2020 Min. 4:45-12:48), but ultimately determined that he had no discretion to suspend the fine or allow Mr. Curran to satisfy the fine by alternative means. (8/11/2020 Min. 5:55-6:01, 17:30-18:20.)

Mr. Curran was sentenced to ten days in jail, all but one day suspended; completion of the ACT/Prime for Life course and any treatment recommendations, and imposed a \$600 cash fine. (D.C. Doc. 0.16.)

Curran appealed his sentence to the district court. (D.C. Doc. 0.20.) The district court affirmed the municipal court's ruling; he then appealed his case to this Court. (D.C. Doc. 0.25.) The Court remanded the case for resentencing, finding that the sentencing judge did have discretion based on Mont. Code Ann. §§ 46-18-201(2)(a), (3)(b) to suspend the mandatory minimum fine or satisfy the fine in a way other than dollar for dollar, such as through food bank donations. (*City of Whitefish v. Curran*, 2023 MT 118, ¶ 25, 412 Mont. 499, 531 P.3d 547.)

On September 13, 2023, Curran was resentenced in municipal court. (9/13/2023 Min. 0.25-8:35) At the sentencing hearing, he objected to the imposition of any fine. (9/13/2023 Min. 3:00-3:04.) He objected to both a dollar-for-dollar fine and any alternative means of satisfying the fine such as food bank donations. (9/13/2023 Min. 3:05-3:21.) Mr. Curran argued that imposition of any fine would violate equal protection provisions of the U.S. and Montana Constitutions.

(9/13/2023 Min. 3:55-4:02.) The Whitefish Municipal Court imposed a \$600 fine, fully suspended, but conditioned on Mr. Curran's completion of the Prime for Life course. (9/13/2023 Min. 5:26-5:29; D.C. Doc. 0.35.)

Curran again appealed to the District Court. (Doc. 0.36.) The district court affirmed the municipal court's sentencing order. (D.C. Doc. 4, attached as Appendix A.)

Mr. Curran now appeals to this Court. (D.C. Doc. 8.)

### **STATEMENT OF THE FACTS**

On March 8, 2020, Thomas Curran was cited for Driving Under the Influence and Reckless Driving; he ultimately pleaded guilty to an amended charge of DUI *per se* pursuant to Mont. Code Ann. § 61-8-406(1)(a) (2019). (8/11/2020 Min. 3:00-4:20) His plea agreement called for ten days in jail with all but one suspended, the minimum \$600 fine provided in Mont. Code Ann. § 61-8-722(1) (2019), along with completion of the Assessment, Course, and Treatment program ("ACT"). (D.C. Doc. 0.14.)

At sentencing, the judge conducted an ability-to-pay inquiry. (8/11/2020 Min. 5:25.) Mr. Curran presented testimonial evidence about his financial situation. (8/11/2020 Min.) At the time, he was a 73

year-old man. He uses a walker and requires supplemental oxygen. (9/13/2023 Min. 2:44-2:49.) He had worked until recently as a certified nurse's aid but was let go in March of 2020 because of health problems, including double pneumonia, chronic obstructive pulmonary heart disease, and a fractured spine, preventing him from performing his duties. (8/11/2020 Min. 8:30-9:00). His sole source of income at the time of sentencing was social security disability payments in the amount of \$1,105 per month. (8/11/2020 Min. 11:20; 12:00). His rent was \$650 per month. (8/11/2020 Min. 11:45). His limited assets included a 1996 Buick and a 1996 Ford Explorer, that did not run, and was "worthless." (8/11/2020 Min. 12:00). Mr. Curran had no savings. (8/11/2020 Min. 12:30). His expenses exceeded his income every month. (8/11/2020 Min. 12:50). He had been temporarily relying on others' financial assistance. (8/11/2020 Min. 13:00). Mr. Curran's financial situation was so dire that he could not afford his prescription medications. (8/11/2020 Min. 13:15).

Mr. Curran argued that the fine in this case should be suspended due to his extremely limited finances. (8/11/2020 Min. 2:22-2:35.) The judge did not feel he had discretion to suspend the mandatory minimum

fine provided by statute. (8/11/2020 Min. 5:55-6:01.) Mr. Curran was sentenced to ten days with all but one suspended, a \$600 fine, and completion of the Prime for Life course. (8/11/2020 Min. 22:21.) Mr. Curran appealed the sentence to district court. (D.C. Doc. 0.20.)

The District Court affirmed the municipal court's sentence. Curran then appealed to the Supreme Court. (D.C. Doc. 8.) In that appeal, Mr. Curran argued that not only did the municipal court have discretion to consider sentencing alternatives to a dollar-for-dollar fine payment but that it was obligated by that statute to consider alternatives in light of Mr. Curran's financial situation. (Appellant's Opening Brief, DA 21-0406, *City of Whitefish v. Thomas Curran*, 2023 MT 118, 412 Mont. 499, 531 P.3d 547.) This Court, citing its precedent in *State v. Mingu*s, found that while the sentencing court did not have discretion to not impose the mandatory minimum fine, the judge did have discretion as to the method of payment allowed. *City of Whitefish v. Curran*, 2023 MT 118, ¶ 27, 412 Mont. 499, 531 P.3d 547. This could mean suspending the fine or allowing Mr. Curran to make food bank donations in lieu of a cash payment. *Curran*, ¶ 25, citing Mont. Code

Ann. §§ 46-18-201(2)(a), 3(b). Mr. Curran's case was remanded for resentencing in municipal court. (D.C. Doc. 0.29.)

On September 13, 2023, Curran was resentenced in municipal court. (9/13/2023 Min.) At the sentencing hearing, he now objected to the imposition of any fine. (9/13/2023 Min. 3:00-3:04.) He argued against both a dollar-for-dollar fine and any alternative means of satisfying the fine such as food bank donations or community service (9/13/2023 Min. 3:05-3:21), on the basis that imposition of any fine would violate equal protection provisions of the U.S. and Montana Constitutions. (9/13/2023 Min. 3:55-4:02.)

The Whitefish Municipal Court again imposed a \$600 fine, this time fully suspended, conditioned on Mr. Curran's completion of a chemical dependency evaluation and the Prime for Life course. (9/13/2023 Min. 5:25-5:49.) Mr. Curran again appealed to the District Court. (D.C. Doc. 0.36.)

On appeal, Mr. Curran argued that the DUI sentencing statute's mandatory minimum fine is facially unconstitutional. (D.C. Doc. 3.) The fine's mandatory nature removes the court's discretion to consider factors required by the constitution's Excessive Fines Clause and Mont.

Code Ann. § 46-18-231(3). The District Court affirmed the Municipal Court's sentence. (Appendix A.)

Mr. Curran filed a notice of appeal.

### **STANDARD OF REVIEW**

An appellate court reviews fines the same as sentencing conditions. *State v. Ingram*, 2020 MT 327, ¶ 8, 402 Mont. 374, 478 P.3d 799 (citing *State v. Reynolds*, 2017 MT 317, ¶ 15, 390 Mont. 58, 408 P.3d 503). An appellate court reviews sentences of less than one year of incarceration both for legality and for abuse of discretion. *State v. Himes*, 2015 MT 91, ¶ 22, 378 Mont. 419, 345 P.3d 297 (citing *State v. Breeding*, 2008 MT 162, ¶ 10, 343 Mont. 323, 184 P.3d 313). Legality of a sentence is reviewed de novo. *State v. Daricek*, 2018 MT 31, ¶ 7, 390 Mont. 273, 412 P.3d 1044 (citation omitted).

This court reviews decisions by a district court acting as an appellate court as if originally appealed to this Court. *City of Missoula v. Girard*, 2013 MT 168, ¶ 9, 370 Mont. 443, 303 P.3d 1283. On appeal, this Court will review the municipal court record independently of the district court's decision, applying the appropriate standard of review to its own examination of the record. *Girard*, ¶ 9.

Whether a criminal sentence violates a constitutional provision is reviewed de novo. *State v. Yang*, 2019 MT 266, ¶ 8, 397 Mont. 486, 452 P.3d 897 (citing *State v. Coleman*, 2018 MT 290, ¶ 4, 393 Mont. 375, 431 P.3d 26).

### **SUMMARY OF THE ARGUMENT**

Thomas Curran received an illegal sentence when the Whitefish City Court imposed a \$600 suspended fine for DUI *per se*, because the mandatory minimum fine makes the sentencing statute facially unconstitutional.

Individuals are given the right to be free from excessive fines by the U.S. and Montana constitutions. U.S. Const. amend. VIII and Mont. Const. art. II, § 22. Whether or not a fine is excessive is dependent upon an offender's financial circumstances and the nature of the offense. *State v. Yang*, 2019 MT 266, 397 Mont. 486, 452 P.3d 897, ¶ 24. The protection from excessive fines is codified in Mont. Code Ann. § 46-18-231(3), which provides that a sentencing judge “may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine and interest.” The statute gives the judge an

opportunity to take into consideration the factors that may make a fine excessive:

In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine and interest will impose.

Mont. Code Ann. § 46-18-231(3).

This Court recently found in *State v. Gibbons* that the mandatory minimum fine found in Montana's felony DUI sentencing statute, Mont. Code Ann § 61-8-731(3) (2019) is facially unconstitutional. *State v. Gibbons*, 2024 MT 63, 416 Mont. 1, 545 P.3d 686, ¶ 60. The mandatory fine takes away the sentencing judge's discretion to consider constitutionally mandated proportionality factors such as the nature of the offense and the offender's ability to pay.

The DUI *per se* sentencing statute under which Mr. Curran was sentenced, Mont. Code Ann. § 61-8-722(1), and the current statute, Mont. Code Ann. § 61-8-1007(2)(a)(i), likewise contain a mandatory minimum fine. This makes the statutes facially unconstitutional.

Mr. Curran's testimony to the municipal court regarding his finances established that he does not have the ability to pay a fine. The

imposition of any fine on Mr. Curran is unduly burdensome and violates his constitutional right to be free from excessive fines.

### **ARGUMENT**

- I. The mandatory minimum \$600 fine provided in Mont. Code Ann. § 61-8-1007(2)(a)(i) renders the statute facially unconstitutional in that it does not give the court discretion to consider a defendant's ability to pay as constitutionally required.**

Mr. Curran's sentence in Whitefish Municipal Court was illegal because the statute upon which it is based is facially unconstitutional.

The United States and Montana Constitutions both provide protections against imposition of excessive fines. U.S. Const. amend. VIII; Mont. Const. art. II, § 22. The United States Constitution's Eighth Amendment provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Constitution amend. VIII. The excessive fines clause is incorporated against the states via the Fourteenth Amendment's Due Process Clause. *Timbs v. Indiana*, 586 U.S. 146, 156, 139 S. Ct. 682, 691, 203 L. Ed. 2d 11, 15. The Montana Constitution contains the same prohibition ("Excessive bail shall not be required, or excessive fines

imposed, or cruel and unusual punishments inflicted.”) Mont. Const. art. II, § 22.

Whether a fine is excessive depends upon the individual circumstances of the offender. *State v. Ber Lee Yang*, 2019 MT 266, 397 Mont. 486, 452 P.3d 897, ¶ 24. A judge must consider “the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine will impose” when imposing a fine as part of a criminal sentence. *Yang* at ¶ 24. This proportionality language is codified in Mont. Code Ann. § 46-18-231(3), which provides that a sentencing judge “may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine and interest.” The statute lists the factors that a judge must take into consideration when considering a fine’s appropriateness:

In determining the amount and method of payment, the sentencing judge shall take into account the nature of the crime committed, the financial resources of the offender, and the nature of the burden that payment of the fine and interest will impose.

Mont. Code Ann. § 46-18-231(3).

Recently, the Court ruled that the mandatory minimum fine language in § 61-8-731(3) (2019), the sentencing statute for felony DUI, is facially unconstitutional. *State v. Gibbons*, 2024 MT 63, ¶ 60, 416

Mont. 1, 545 P.3d 686. Mont. Code Ann. § 61-8-731(3) (2019) provided that a fifth or subsequent DUI offender be sentenced to “a term of not less than 13 months or more than five years, or a fine of not less than \$5,000 or more than \$10,000.” (The current felony DUI sentencing statute is found at Mont. Code Ann. § 61-8-1008.)

This Court had previously found in *State v. Mingus* that the ability to pay language found in § 46-8-231(3) only applies to discretionary criminal fines. *State v. Mingus*, 2004 MT 24, ¶ 15, 319 Mont. 349, 84 P.3d 658. In the case of mandatory minimum fines, a sentencing judge would not have discretion to impose a lesser sentence. *Id.* This Court found that the court’s imposition of a mandatory minimum fine without an inquiry into the offender’s ability to pay was legal because of the statute’s non-discretionary language. *Id.*

In *State v. Gibbons*, this Court overruled its finding in *State v. Mingus* with respect to imposition of mandatory fines. *Gibbons*, ¶ 64. This Court agreed with its analysis in *Mingus* insofar as “a mandatory minimum allows no discretion for the sentencing judge to impose anything but the mandatory fine.” *Gibbons*, ¶ 56. That fact does not make imposition of a mandatory minimum fine regardless of ability to

pay legal. *Id.* Rather, the non-discretionary language renders the statute unconstitutional. *Gibbons*, ¶ 64.

Statutorily mandated minimum fines stand in opposition to the state and federal constitutional excessive fines clauses and the Montana legislature's intent as found in Mont. Code Ann. § 46-18-231(3), which require that the court consider proportionality factors including the offender's ability to pay. *Gibbons*, ¶ 56. This makes the statute facially unconstitutional:

When a sentencing statute containing a mandatory minimum fine requirement prevents the trial court from considering proportionality factors before imposing a fine, the statute is facially unconstitutional.

*Gibbons* ¶ 58 citing *Yang* ¶¶ 18-19, 28.

The court found with respect to Mont. Code Ann. § 61-8-731(3) (2019), the specific statute at issue in *Gibbons*, that,

The mandatory minimum \$5,000 fine required by the sentencing statute, every time it is imposed, prevents a judge from considering constitutional and statutorily mandated factors and is, therefore, facially unconstitutional.

*Gibbons*, ¶ 60.

As a result, the statute violated *Gibbons*' constitutional right to be free from excessive fines. *Gibbons*, ¶ 64.

Like the statute at issue in *Gibbons*, the statute under which Mr. Curran was sentenced is facially unconstitutional because it includes a mandatory minimum fine. Mr. Curran was sentenced under Mont. Code Ann. § 61-8-722(1) (2019), the updated version of which is found under Mont. Code Ann. § 61-8-1007(2)(a)(i). That statute requires that a first violation of DUI *per se* be punished “by imprisonment for not more than six months and by a fine of not less than \$600 or more than \$1,000.” Mont. Code Ann. § 61-8-1007(2)(a)(i). Like the felony statute, the misdemeanor statute’s mandatory minimum fine removes the sentencing judge’s discretion to consider constitutionally and statutorily required proportionality factors when imposing a fine.

The only major difference between the fine mandated by the misdemeanor statute at issue here and the felony statute at issue in *Gibbons* is the amount (\$600 versus \$5,000). The difference is immaterial to the question of the statute’s constitutionality. In finding that the excessive fines clause is incorporated against the states via the 14<sup>th</sup> Amendment’s Due Process Clause, “the Supreme Court emphasized that an individual’s ability to pay was historically an essential factor in considering a fine’s excessiveness.” *Gibbons*, ¶ 48 citing *Timbs v.*

*Indiana*, 586 U.S. 146, 151-53, 139 S. Ct. 682, 687-89, 203 L. Ed. 2d 11, 17-18 (2019). “A sentencing court is authorized to order a fine or cost only if the offender has the ability to pay...” *Gibbons*, ¶ 47. For someone with Mr. Curran’s extremely limited means, any fine is onerous. Proportionality is just as significant when imposing a \$600 fine as it is for a \$5,000 fine.

Because Montana’s DUI *per se* sentencing statute is facially unconstitutional, Mr. Curran’s sentence is illegal. Even though Mr. Curran’s fine was suspended, a fine was still imposed. The fine’s suspension was conditioned on completion of the Prime for Life course. Conditioning the fine’s suspension on completion of a separate requirement retains its potential to become a payment obligation. In the event that he is unable to complete treatment, the court could choose to impose the fine as a cash amount. In Mr. Curran’s case, completion of Prime for Life may prove difficult. He has physical limitations that necessitate his reliance on a walker and supplemental oxygen. Mr. Curran’s limited financial means would hamper his ability to afford any potential costs associated with treatment.

Because the statute removed the municipal court's discretion to take Mr. Curran's financial situation and personal circumstances into consideration when imposing a fine, the imposition of a fine in his case was illegal.

### CONCLUSION

Both Mont. Code Ann. § 61-8-722(1) (2019) and its current iteration Mont. Code Ann. § 61-8-1007(2)(a)(i) include a mandatory minimum \$600 fine. Consistent with the Court's recent holding in *Gibbons*, the statutes are facially unconstitutional.

This Court should reverse and remand to the Municipal Court with instructions to re-sentence Curran with consideration of the proportionality factors provided in Mont. Code Ann. § 46-18-231(3).

Respectfully submitted this 7<sup>th</sup> day of March, 2025.

By: /s/ Abigail Mathews  
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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 footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,016, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Abigail Mathews  
ABIGAIL MATHEWS

**APPENDIX**

Order Affirming Whitefish Municipal Court TK 20-675.....App. A

## CERTIFICATE OF SERVICE

I, Abigail Davis Mathews, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-07-2025:

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