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COUNSEL FOR RESPONDENTS

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 25-0032

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DEANA THOMAS,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS, and  
SHERIFF MIKE LINDER, Yellowstone County  
Detention Center,

Respondents.

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

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In compliance with this Court's order of January 22, 2025, the Attorney General's Office (State) responds to the Petition for Writ of Habeas Corpus filed by Deana Thomas (Thomas).

As part of its response, the State submits, and incorporates by reference, relevant documents from the district court proceedings and records from the

Department of Corrections (DOC) in the State's appendices. (*See* State's Appendices (Apps.) 1-14.) The State requests that this Court take judicial notice of the documents and the facts presented in its appendices pursuant to Mont. R. Evid. 202(b)(6) (Court may take judicial notice of records from any Montana court) and Mont. R. Evid. 201(b)(2) (Court may take judicial notice of facts "not subject to reasonable dispute," as they are "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned").

## **BACKGROUND**

### **I. Thomas's original convictions and sentences**

On December 5, 2014, the State charged the Petitioner, Deana Thomas (Thomas), in Yellowstone County Cause No. DC-14-976, with felony assault with a weapon, in violation of Mont. Code Ann. § 45-5-213(1)(b), felony endangering the welfare of children, in violation of Mont. Code Ann. § 45-5-622(3)(c), felony possession of dangerous drugs, in violation of Mont. Code Ann. § 45-9-102, and misdemeanor possession of drug paraphernalia, in violation of Mont. Code Ann. § 45-10-103. (Apps. 1, 3.) The State alleged Thomas had exposed her three children to methamphetamine in her home and threatened one child with a knife. (Apps. 2-3.)

On January 28, 2016, Thomas pleaded guilty to felony endangering the welfare of children and felony drug possession pursuant to a plea agreement with

the State. (Apps. 4-5.) In the plea agreement, the parties agreed to jointly recommend “Eight years suspended to run consecutive to the sentence Defendant receives in Missoula.” (App. 5 at 3-4.)

During the proceedings in Yellowstone County Cause No. DC-14-976, the State had charged Thomas in Missoula County Cause No. DC-15-539 with felony drug possession, misdemeanor possession of drug paraphernalia, and misdemeanor theft. (Apps. 11-12.) A week before Thomas entered into the plea agreement in the Yellowstone County matter, Thomas had pleaded guilty to the offenses in the Missoula matter. (Apps. 1, 4-5, 11.)

On March 28, 2016, the district court in Yellowstone County Cause No. DC-14-976 sentenced Thomas. (Apps. 6-7.) The district court committed Thomas to the DOC for eight years, all suspended, for the felony endangering the welfare of children conviction, and ordered it “to run consecutively to Missoula County DC-15-539.” (App. 7.) The district court also imposed an eight-year DOC commitment for the felony drug possession conviction, all suspended, and ordered that sentence to run concurrently to Thomas’s eight-year sentence for felony endangering the welfare of children. (*Id.*) The district court issued its written judgment on April 18, 2016. (*Id.*)

On April 7, 2016, the district court in Missoula County Cause No. DC-15-539 sentenced Thomas. (Apps. 11, 12 at 9.) The district court imposed a suspended

two-year DOC commitment for Thomas's conviction of felony possession of dangerous drugs, a suspended six months in jail for her misdemeanor possession of drug paraphernalia conviction, and a suspended six months in jail for her misdemeanor theft conviction. (App. 12 at 2-3.) The district ordered those sentences to "run consecutive to the sentence imposed in Yellowstone County." (*Id.*)

## **II. Thomas's revocation sentences**

On December 12, 2017, the district court in Yellowstone County Cause No. DC-14-976 revoked Thomas's suspended sentences based on numerous violations and entered its disposition. (Apps. 8-10.) The district court committed Thomas to the DOC for 7 years and 321 days for her felony endangering the welfare of children conviction and a concurrent 7 years and 321 days for her felony drug possession conviction. (Apps. 9-10.) The district court did not suspend any time. (*Id.*) It reduced Thomas's sentences for elapsed time served for the period of April 7, 2016 through October 24, 2016, and for time served in a detention center for the period of November 16, 2017 through December 12, 2017. (*Id.*)

On January 11, 2018, the district court in Missoula County Cause No. DC-15-539 revoked Thomas's two-year suspended sentence for her felony drug possession conviction and resentenced Thomas to a two-year DOC commitment

with no time suspended.<sup>1</sup> (App. 13.) The district court specified the sentence would “run consecutive to the sentence imposed in Yellowstone County.” (*Id.* at 2.)

Based on the order that the revocation disposition orders were issued, the DOC has allocated Thomas’s sentences in Yellowstone County Cause No. DC-14-976 as her first sentence and Thomas’s sentence in Missoula County Cause No. DC-15-539 as her second sentence. (App. 14.)

### **III. Thomas’s petition for writ of habeas corpus**

On January 13, 2025, Thomas filed a petition for writ of habeas corpus with this Court. (1/13/25 Petition.) Thomas claimed that her 2014 sentences for endangering the welfare of children and felony drug possession were longer than the law allows because the statutory max was five years, and the district court imposed eight-year sentences for each. (*Id.* at 2.)

On January 22, 2025, this Court ordered the State to respond and address the following issues.

First, did the Yellowstone County District Court impose a facially invalid sentence by imposing an eight-year term to the DOC for [endangering the welfare of children], contrary to Montana’s sentencing statute?

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<sup>1</sup> The district court did not revoke or resentence Thomas for her misdemeanor convictions for possession of drug paraphernalia and theft. (App. 13.)

Second, did the Yellowstone County District Court impose a facially invalid sentence when the court ran Thomas's DOC sentence consecutively to a sentence that had not been imposed?

Third, was the second error cured when the Missoula County District Court imposed a consecutive sentence after the original sentence imposed in Yellowstone County?

Fourth, what sentence did Thomas begin serving on March 28, 2016—the suspended sentence from the Yellowstone County District Court or from the Missoula County District Court?

Lastly, what is Thomas's remedy or redressability to correct the alleged facially invalid sentence?

(1/22/25 Order at 2-3.)

### **STANDARD OF REVIEW AND APPLICABLE LAW**

A person who is incarcerated or restrained of liberty may apply for a “writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint.” Mont. Code Ann. § 46-22-101(1).

The fundamental purpose of habeas corpus is to remedy illegal restraints or imprisonments (e.g., a sentence that exceeds statutory or constitutional limits).

*Lott v. State*, 2006 MT 279, 334 Mont. 270, 150 P.3d 337. “[T]he burden in a habeas corpus proceeding is upon the petitioner to convince the Court that a writ should be issued.” *Miller v. Eleventh Judicial Dist. Court*, 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186. This Court will grant relief to a convicted offender who meets their

burden to show they are serving “a facially invalid sentence—a sentence which, as a matter of law, the court had no authority to impose.” *Lott*, ¶ 22.

This Court reviews a criminal sentence de novo to determine whether the sentence is within statutory parameters. *State v. Martz*, 2008 MT 382, ¶ 18, 347 Mont. 47, 196 P.3d 1239.

## **ARGUMENT**

### **I. Thomas is not entitled to relief based on the district court’s original judgment in Yellowstone County Cause No. DC-14-976.**

To obtain relief in this proceeding, Thomas must challenge the sentences subjecting her to State custody, which are the revocation judgments in Yellowstone County Cause No. DC-14-976 and Missoula County Cause No. 15-539. *See* Mont. Code Ann. § 46-22-101(1). It is necessary for the State to address Thomas’s original judgments to respond to this Court’s questions, but neither judgment entitles Thomas to relief in this proceeding. *See id.*

A sentencing court does not have lawful authority to impose a sentence consecutive to one not yet imposed. *State v. McGuire*, 260 Mont. 386, 388, 860 P.2d 148, 149-50 (1993). In Yellowstone County Cause No. DC-14-976, the district court originally sentenced Thomas on March 28, 2016. It incorrectly ordered Thomas’s sentences to run consecutive to the sentences imposed in Missoula County Cause No. DC-15-539, because those sentences were not

imposed until April 7, 2016. *See id.* On March 28, 2016, Thomas began serving her sentences in Yellowstone County Cause No. DC-14-976 because it was the only sentence that had been imposed at that time. *See State v. Lane*, 1998 MT 76, ¶ 40, 288 Mont. 286, 957 P.2d 9 (“the sentence orally pronounced from the bench in the presence of the defendant is the legally effective sentence and valid, final judgment”); Mont. Code Ann. § 46-18-115 (a sentencing court must impose a sentence during the sentencing hearing).

On April 7, 2016, the district court in Missoula County Cause No. DC-15-539 lawfully imposed Thomas’s sentence consecutive to the sentences imposed in Yellowstone County Cause No. DC-14-976. *See* Mont. Code Ann. § 46-18-401(4) (“Separate sentences for two or more offenses must run consecutively unless the court otherwise orders.”). Once the Missoula court imposed Thomas’s sentences consecutive to her sentences in Yellowstone County Cause No. DC-14-976, the incorrect designation of a consecutive sentence in the prior Yellowstone County judgment had no legal effect on her sentence. *See McGuire*, 260 Mont. at 388, 860 P.2d at 149-50. Although the erroneous language remained in Thomas’s original judgment in Yellowstone County Cause No. DC-14-976, no relief is necessary at this time because the terms of that judgment have been altered by the disposition order on revocation, which is the sentencing order causing Thomas’s incarceration or restraint. *See* Mont. Code Ann. § 46-22-101(1); *Lott*, ¶ 22.



**II. The State concedes the district court in Yellowstone County Cause No. DC-14-976 imposed facially invalid sentences for Thomas’s convictions.**

The statutory maximum sentence for both of Thomas’s convictions in Yellowstone County Cause No. DC-14-976 was 5 years. *See* Mont. Code Ann. §§ 45-5-622(5)(b) (endangering the welfare of children), 45-9-102(2) (criminal possession of dangerous drugs). In its initial sentence, the district court imposed an 8-year suspended sentence for both of Thomas’s convictions and ran them concurrently to each other. These sentences exceeded the district court’s statutory authority. *See id.*; *Lott*, ¶ 22; *see also State v. Seals*, 2007 MT 71, ¶ 9, 336 Mont. 416, 156 P.3d 15 (three concurrent 15-year sentences for three convictions of felony drug possession with 5-year statutory maximums exceeded statutory parameters). The district court perpetuated that error in its revocation disposition by imposing the full duration of the original sentences, minus credit for time served—7 years and 321 days.

On revocation, a district court is constrained by the particulars of Mont. Code Ann. § 46-18-203(7). *Seals*, ¶ 15. In a revocation disposition, a district court can only “require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprisonment or commitment term than the original sentence.” Mont. Code Ann. § 46-18-203(7)(a)(iii). Because the district court in Yellowstone County Cause

No. DC-14-976 only had statutory authority to impose up to a five-year commitment for either of Thomas's convictions as her initial sentences, it could not require her to serve more than that after it revoked those unlawful sentences. *See id.* The district court was constrained by the statutory maximum allowed, reduced by credit for time served. Mont. Code Ann. §§ 45-5-622(5)(b), 45-9-102(2), 46-18-203(7)(b); *Lott*, ¶ 22.

Thomas's sentences for her convictions of both endangering the welfare of children and felony drug possession exceeded the district court's statutory authority and are facially invalid sentences. *See* Mont. Code Ann. § 46-18-203(7)(a)(iii); *Lott*, ¶ 22. The remedy is to order the district court in Yellowstone County Cause No. DC-14-976 to amend its revocation judgment to impose revocation dispositions for both of Thomas's convictions that are within statutory parameters reduced by credit for time served. *See* Mont. Code Ann. §§ 45-5-622(5)(b), 45-9-102(2), 46-18-203(7)(b); *Lott*, ¶ 22. Because the district court originally imposed those sentences concurrently, which was lawful, the amended disposition must again impose the amended sentences concurrently. *See Seals*, ¶ 18.

As explained above, this Court's remedy does not need to require an amendment to Thomas's original judgment in Yellowstone County Cause No. DC-14-976. Moreover, it does not need to address the revocation judgment in Missoula County Cause No. DC-15-539. The district court in that matter also

revoked Thomas's sentence, but it imposed its revocation disposition after the revocation disposition in Yellowstone County Cause No. DC-14-976. Like Thomas's original judgment in Missoula County Cause No. DC-15-539, the district court imposed the revocation disposition second in time and consecutively to Thomas's sentences in Yellowstone County Cause No. DC-14-976. Thomas's relief is limited to the revocation judgment in Yellowstone County Cause No. DC-14-976.

### **CONCLUSION**

The State respectfully requests this Court to order the district court in Yellowstone County Cause No. DC-14-976 to amend its revocation disposition order to impose sentences within statutory parameters reduced by credit for time served.

Respectfully submitted this 4th day of April, 2025.

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By: /s/ Brad Fjeldheim  
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## **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 2,142 words, excluding caption, signatures, certificate of compliance, certificate of service, and any exhibits.

/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 04-04-2025:

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Electronically signed by LaRay Jenks on behalf of Brad Fjeldheim  
Dated: 04-04-2025