

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0131

STATE OF MONTANA,

Plaintiff and Appellant,

v.

ANDREW EMMINGS,

Defendant and Appellee.

APPELLANT'S OPENING BRIEF

On Appeal from the Montana Fourth Judicial District Court,
Missoula County, The Honorable John W. Larson, Presiding

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STATEMENT OF THE ISSUES

1. Whether the district court erred in reconsidering Appellee's revocation of conditional discharge in a subsequent proceeding when Appellee failed to timely appeal the issue to the Montana Supreme Court.
2. Whether the district court erred in dismissing Appellee's petition to revoke after finding that an individual on conditional discharge from supervision may terminate the remaining time on his sentence by moving out of state, pursuant to Mont. Code Ann. § 46-13-1020, and that the person cannot be placed back on probation or revoked.
3. Whether the district court erred in adopting Appellee's argument verbatim in its order when the court's legal conclusions in the order regarding Appellee's banishment and impossible conditions were unsupported by the record.

STATEMENT OF THE CASE

On December 11, 2017, the State charged Appellant Andrew Behr Emmings (Emmings) with 21 counts of violation of an order of protection under Mont. Code Ann. § 45-5-626(3). (Docs. 1, 3.) Emmings pleaded guilty and was sentenced to 12 years with the Department of Corrections (DOC), with 10 years suspended. (Docs. 56, 57, 76, 82.)

Emmings discharged his active sentence in July 2021. (Doc. 88.) On August 23, 2022, the district court granted Emmings’ second petition for conditional discharge. (Doc. 92.) In the order, the district court made clear that “as specified by Mont. Code Ann. § 46-23-1011(10), this discharge is only conditional. The Court may reimpose the supervision requirement if necessary and appropriate.” (*Id.*)

The State moved to revoke Emmings’ conditional discharge on January 30, 2023, after Emmings threatened to kill a former newspaper reporter. (Doc. 93.) After briefing and two hearings, the district court reimposed formal supervision through the DOC. (Docs. 104, 113, 118, 120, 126, 128.)

Emmings failed to cooperate, and the State filed a petition to revoke his suspended sentence on December 18, 2023. (Doc. 129.) The Honorable Judge Leslie Halligan recused herself, and the Honorable Judge John Larson assumed jurisdiction over the case. (Doc. 130.) During the proceedings on the petition to revoke, Emmings again challenged Judge Halligan’s reimposition of the conditional discharge. (Doc. 140.) Judge Larson granted Emmings’ motion to dismiss and struck the order reimposing the probationary sentence from the record. (Doc. 147.)

Pursuant to Mont. Code Ann. § 46-20-103(1)(a), the State of Montana timely appealed the district court's opinion and order granting Emmings' motion to dismiss and vacating hearing(s). (2/14/25 Notice of Appeal.)

STATEMENT OF THE FACTS

I. The offense and procedural history

On May 15, 2017, the Missoula County Justice Court issued a temporary order of protection (TOP) listing Emmings as the respondent.¹ (Doc. 1.) Emmings was served with the TOP the next day. (*Id.*) On June 1, 2017, the justice court held a hearing on the TOP. (*Id.*) A permanent order of protection (OOP) was granted. (*Id.*) On June 5, 2017, Emmings, who had not appeared for the hearing, called the justice court to inquire about the status of the OOP. (*Id.*) The justice court informed Emmings that the OOP had been granted. (*Id.*) Emmings refused to provide information to the justice court so that he could be properly served with the OOP. (*Id.*)

Between June 5, 2017, and June 7, 2017, the protected party reported that Emmings had violated the OOP several times. (*Id.*) A phone call occurred between Missoula County Sheriff's Detective Garrett Van Hoose and Emmings. (*Id.*)

¹ Emmings pleaded guilty to eight counts of violation of the OOP on May 1, 2019. (Doc. 56.) Because Emmings pleaded guilty to the charges, the State relies upon the charging documents for this recitation of the facts.

During that recorded call, Detective Van Hoose read Emmings the OOP and informed him it would be a violation to contact the protected party. (*Id.*)

Over the next four months, Emmings contacted the protected party repeatedly. (*Id.*) The messages ranged from apologizing for his actions that contributed to the demise of the relationship to threatening legal action against the protected party. (*Id.*) The State charged Emmings with 21 counts of violation of the OOP under Mont. Code Ann. § 45-5-626(3). (Docs. 1, 3.)

During the pendency of the criminal case, Emmings' release was revoked twice. (Docs. 13, 59.) Emmings was revoked for committing a new felony offense, criminal endangerment in violation of Mont. Code Ann. § 45-5-207, by driving erratically on the highway, nearly causing a collision. (Doc. 13.) He eventually posted bond and was released. (Doc. 20.)

On May 1, 2019, Emmings entered guilty pleas to 3 of the 21 counts of violation of the OOP, pursuant to a plea agreement. (Docs. 56, 57.) Judge Halligan ordered a presentence investigation report (PSI), and that sentencing would take place on July 17, 2019. (Doc. 64.) The State again filed to revoke Emmings' release after it learned of his noncompliance with the PSI process and of a new contact with law enforcement. (Doc. 59.) After the district court issued the warrant, Emmings left the state. (Doc. 64.)

In the days leading up to sentencing, Emmings' relationship with his attorney, Ben Darrow, deteriorated. (Doc. 63.) On July 16, 2019, one day prior to sentencing in this matter, Emmings threatened Darrow and caused a disturbance at Darrow's office, resulting in a new disorderly conduct charge in the municipal court. (Docs. 71, 72.)

Emmings also became obsessed with the local newspaper reporter covering his criminal cases. Dillon Kato was the "cops and courts" reporter for the Missoulian and wrote at least two articles related to Emmings and his criminal cases. (8/25/23 Tr. [Tr.] at 42.) Shortly after the State initiated proceedings in the instant case, Emmings arrived at the Missoulian. (*Id.*) He was upset, and seemed to want Kato to help him find new employment. (*Id.*)

A few months later, Emmings again arrived at the Missoulian. (*Id.*) Kato was not present, but Emmings spoke to the managing editor. (*Id.*) Emmings demanded that the Missoulian take down the news articles about him. (*Id.*) Emmings threatened that he was a "man of action," and that the articles would come down "one way or another." (*Id.*) The Missoulian formally trespassed him from its property. (*Id.* at 43.)

On July 16, 2019, the same day Emmings caused the disturbance at Darrow's office, he was observed at the Missoulian. (*Id.*) Emmings went through a security fence and approached the newsroom windows where he made lewd

gestures at the Missoulain staff. (*Id.* at 43-44.) Emmings was arrested the same day. (Doc. 70.)

On July 24, 2019, Judge Halligan sentenced Emmings to a net sentence of 12 years to the DOC, with 10 years suspended. (Docs. 76, 82.) As a condition of his sentence, he was ordered to conduct himself as a good citizen. (Doc. 82.) The district court specifically ordered that

Defendant shall not use social media except for business purposes.

The Probation Officer is required to monitor the social media to ensure it is used only for business. The Court ordered the Defendant to find a counselor to help him address social media and other communications to avoid threatening and inappropriate communications.

(*Id.* (emphasis in original).) The district court reasoned, “Although the Defendant does not perceive his communication to be threatening, his communication and behaviors have been received by other individuals in the community as threatening and terrorizing.” (*Id.*) Emmings did not appeal his sentence or conditions to this Court.

II. Revocation of the conditional discharge

Emmings served his custodial sentence and was released to probation in July 2021. (Doc. 88.) On April 5, 2022, Emmings filed a petition for conditional discharge of his sentence pursuant to Mont. Code Ann. § 46-23-1011(6)(a)(i). (*Id.*)

The district court determined Emmings did not satisfy the statutory requirements and denied his petition. (Doc. 90.)

Emmings filed his second petition for conditional discharge on August 1, 2022. (Doc. 91.) Emmings' petition contained a letter of support from his probation officer. (*Id.*) While the probation officer supported Emmings' conditional discharge, the letter specified that "[o]nce released [Emmings] will leave the State of Montana to continue[] his business" in California. (*Id.*) The letter further stated that "[p]ursuant to § 46-23-1020, MCA, upon the granting of a conditional discharge from supervision, this offender will no longer be under the supervision of the Montana Probation and Parole Division. The District Court will retain jurisdiction until the date of offender's discharge." (*Id.*)

Judge Halligan granted Emmings' second petition on August 23, 2022. (Doc. 92.) In the order, the district court made clear that "as specified by Mont. Code Ann. § 46-23-1011(10), this discharge is only conditional. The Court may reimpose the supervision requirement if necessary and appropriate." (*Id.*) Emmings moved to California. (Doc. 99.)

On December 26, 2022, Emmings emailed his parents with a series of threats against Kato's life. (Doc. 93; State's Ex. 12.) The subject line read "If you guys don't give me more money to restart my business," and the body continued:

Or help me file a lawsuit, and help me remove the newspaper articles from the paper.

I'm gonna to drive up to Missoula and kill dillon kato[.]

I don'r [sic] have anything else to live for[.]

You're either going to help me beat this financially,

Or my life, and dillon's life, are over. I am going to kill him before my life is over.

I'm going to torture him to death[.]

He ruined the end of your lives with this bullshit[.]

He ruined my life[.]

I'm going to kill him. Before I die. Maybe I'll wait until I'm almost dead. But I am going to have my revenge on him.

(*Id.* (reordered to be chronological).) Emmings' parents forwarded the emails to Emmings' former probation officer, who alerted the State. (*Id.*) The State petitioned the district court to revoke Emmings' conditional discharge. (Doc. 93.) Judge Halligan immediately granted the State's petition. (Doc. 95.) After the State's petition was granted, Emmings' probation officer told him to report back to Missoula. (Doc. 113.) Emmings refused, stating that he would not return, would be blocking her phone number, and would continue to post on Facebook. (*Id.*)

Emmings asked the court to stay the reimposition of supervision pending briefing and an evidentiary hearing. (Doc.101.) The district court agreed. (*Id.*) As a condition of the stay, the district court ordered that Emmings not contact or post about Kato, Darrow, or Missoula County Attorney Matt Jennings. (*Id.*)

Emmings argued that once he was placed on conditional discharge, his “‘conditions of probation’ cease[d] to exist” (Doc. 104.) Since the district court did not impose specific conditions at the time of Emmings’ conditional discharge, and Emmings had not committed a new felony offense or high misdemeanor, he argued the district court could not revoke his conditional discharge. (*Id.*)

The State argued that interpreting the statute as Emmings suggested would reject the plain meaning of the statute and cause an absurd result. (Doc. 113.) The State pointed out that the Montana Supreme Court had previously upheld a revocation of a conditional discharge based on violations of court-imposed conditions in the judgment. (*Id.*, citing *Godat v. Salmonsens*, 411 Mont. 386, 521 P.3d 1156 (2022).) The State alleged that Emmings had committed violations under both state and federal law, and thus, a violation of his condition that he conduct himself as a good citizen. (*Id.*)

The district court heard oral argument on the issue on June 8, 2023. Soon thereafter, the State filed notice of Emmings’ ongoing threatening conduct. (Doc. 121.) On June 19, 2023, Emmings sent a threatening message to David Glaser, the president of a non-bank lending company in Missoula, who had previously denied Emmings a loan in 2016. (*Id.*; Tr. at 64.) The message, sent to Glaser’s LinkedIn account, stated:

Hi Dave

Remember when you told Judge Halligan I was going to kill you?

I do.

Remember when you denied my \$20,000 business loan because I'm Jewish and I have Asperger's?

I'm a multi-millionaire. I never needed the loan. It was just a test to see if you would deny it.

I'll see you in court soon.

(Doc. 121.) Glaser obtained a TOP, alleging other threatening behavior, including Emmings calling Glaser and threatening to kill him in 2016, as well as three phone calls in February 2019 where Emmings told Glaser's assistant to "tell Dave I'm coming for him." (*Id.*)

A. Judge Halligan's order

On July 7, 2023, Judge Halligan ordered that Emmings could be placed back on probation, subject to an evidentiary hearing on the State's alleged violations. (Doc. 122, attached as App. B.) The district court specifically found that Mont. Code Ann. § 46-23-1020(2)(c) controlled in this case, as Emmings had violated a condition of his sentence imposed by the district court. (*Id.*)

In her analysis, Judge Halligan concluded that the language in Mont. Code Ann. § 46-23-1020(2)(c) was ambiguous, and relied on legislative history that provided the intent of the Legislature was to "ensure the court can reimpose

supervision if [a] defendant violates any ‘specific condition as part of their sentence.’” (*Id.*) The legislative history indicated that the language at issue would apply to violations typically found in the standard conditions of probation, which are typically imposed by a court during sentencing. (*Id.*) Additionally, the district court concluded that there was no language contained in the statute that would limit the conditions to those specifically referenced in an order conditionally discharging formal supervision. (*Id.*)

Judge Halligan was not persuaded by Emmings’ argument regarding confusion about which conditions would still apply in the absence of active supervision. (*Id.*) The court believed the conditions that applied to active supervision were “sufficiently distinguishable” from conditions that would apply regardless of the level of supervision. (*Id.*) Judge Halligan reasoned that if there was ambiguity, Emmings could discuss the issue with his probation officer. (*Id.*)

B. The evidentiary hearing

The court held an evidentiary hearing on Emmings revocation of conditional discharge on August 25, 2023. (Doc. 128.) The State provided evidence regarding the above-referenced emailed threats directed at Kato. (Tr. at 14-18.) The State also admitted evidence of eight separate Facebook posts authored by Emmings to show his repeated and continued online harassment of the victim in the underlying OOP case, Kato, Darrow, and Glaser. (*Id.* at 23-29; State’s Exs. 2-9.)

Missoula County Sheriff's Detective Tyler Terrill testified that the abusive and defamatory language found in State's Exhibits 5 (referring to Glaser as "fag-glaser") and 6 ("You can't talk about me like that you fucking punk rat" and "#FagGlaser") could potentially constitute a violation of the privacy in communications statute located at Mont. Code Ann. § 45-8-213. (Tr. at 32-36.) Detective Terrill also provided testimony that all of State's Exhibits 3 through 9 were posted on Emmings' Facebook page between June 14, 2023 and August 1, 2023, in violation of his conditions of sentence and the district court's order of February 15, 2023. (*Id.* at 38-40; Doc. 101.)

Kato testified to the events leading up to Emmings' sentencing in 2019. (Tr. at 41-44.) Kato explained that after the sentencing and while he was in law school, Emmings continued to post concerning things online, leading the University of Montana to ban Emmings from the campus. (*Id.* at 44.) Emmings had also contacted the law office where Kato worked, attempting to find legal counsel to sue Kato within the prior year. (*Id.*)

Kato described learning about the emailed threats to his life and the effect they had on him. (*Id.* at 45.) Although Kato had viewed Emmings' social media posts about him over the years to "stay up to date" on Emmings' statements and location, Kato stated the emails threatening his death "were another level, something [he] hadn't seen before." (*Id.* at 45-47.) The threats caused Kato to buy

a gun and to sleep at places other than his house. (*Id.* at 45.) Kato described that the threats impacted his concentration at work, his sense of self-confidence, his sense of safety, and his practices at home. (*Id.* at 45-46.) Kato stated that that fear was still present. (*Id.* at 46.)

The State asked Kato for his recommendation on how the district court should supervise Emmings. (*Id.* at 50.) Kato described his ongoing internal struggle on the issue. (*Id.* at 50-51.) Kato was concerned that Emmings was not under active supervision by a probation officer, but understood that formal supervision would likely require Emmings' return to Montana and, thus, bring him closer to Kato. (*Id.* at 51.) Kato viewed the distance between Emmings and himself as a benefit but felt that some level of supervision was necessary. (*Id.* at 50-51.) Kato was not opposed to a solution that allowed Emmings to remain in California but still be supervised. (*Id.* at 51.)

Glaser also testified about his experiences with Emmings. (*Id.* at 64-65.) In 2016, a loan officer at Glaser's company, MoFi, denied Emmings a business loan. (*Id.* at 65.) Emmings became belligerent with the loan officer, causing Glaser to get involved. (*Id.*) Emmings told Glaser and other staff that he was going to kill Glaser. (*Id.*) Glaser reported the incident to the police. (*Id.*)

As a result of the harassing messages from Emmings in 2016 and 2019, MoFi and Glaser installed security systems at their respective addresses. (*Id.* at

67-68.) After the LinkedIn message was sent, Glaser held a safety meeting with staff at MoFi and posted photos of Emmings at each entrance. (*Id.* at 69.) Like Kato, Glaser kept tabs on Emmings’ social media. (*Id.* at 71.)

After considering the evidence presented, Judge Halligan found that Emmings had violated the original conditions set forth in the amended judgment. (*Id.* at 81.) The court then heard argument regarding whether Emmings should be placed back on supervision with the DOC. Emmings maintained his argument that Mont. Code Ann. § 46-18-1020(2)(c) was ambiguous, and urged the court to maintain his conditional discharge status with an admonition that any future violations would result in revocation. (*Id.* at 82-83.) The State argued that, although it was unable to charge due to jurisdictional issues, the evidence at the hearing established that Emmings’ behavior constituted intimidation under Mont. Code Ann. § 45-5-203, and asked that Emmings be placed back on formal supervision. (*Id.* at 85-87.)

As a result of the evidentiary hearing, Judge Halligan revoked Emmings’ conditional discharge and ordered him to contact Probation and Parole. (*Id.* at 92.) The district court “permitted [Emmings] to remain in the State of California” and further explained that there was no requirement for him to be in the State of Montana. (*Id.*) The district court imposed all prior conditions, “other than those that would directly require him to be in the State of Montana” (*Id.* at 93.) The

district court also ordered that Emmings work with his probation officer to figure out a path for compliance with conditions and to consult with the probation officer if there was any question as to which conditions he was under. (App. B.)

Judge Halligan issued a written order confirming the oral pronouncement. (Doc. 126, attached as App. C.) She permitted Emmings to remain in California, where he had relocated. (*Id.*) The district court instructed the DOC to establish the frequency of reports and ordered Emmings to reestablish supervision with the DOC by August 31, 2023. (*Id.*)

Emmings stated he would be suing the parties and specifically asked Judge Halligan to recuse herself because she was a party in the lawsuit. (Tr. at 91-92.) At the end of the hearing, Emmings, through his counsel, stated that he was considering an appeal of the district court's order revoking the conditional discharge. (*Id.* at 95.) Emmings did not appeal.

III. The petition to revoke Emmings' sentence

On December 18, 2023, the State filed a petition to revoke Emmings' probationary sentence. (Doc. 129.) The attached report of violation (ROV) described Probation Officer Jeremy Lizotte's (PO Lizotte) repeated attempts to contact Emmings to coordinate his supervision in California. (*Id.*) PO Lizotte initially contacted Emmings on August 29, 2023, to encourage Emmings to apply

for the interstate compact, sign rules of probation, and assist in formulating a plan for his supervision. (*Id.*) PO Lizotte attempted again on September 14, 2023, and on October 12, 2023. (*Id.*) Emmings finally replied, stating:

Yeah, I've decided that I'm not going to be put back on probation for exercising free speech. I have committed no crimes and the condition I allegedly "violated" was free speech. No Judge has the right to tell me what I can/cannot say. Congress dies [sic] not allow Judges to make[] orders that violate the 1st amendment. I have committed no crimes. And furthermore, in a effort to get richer than I am, I'm not going to let anyone who makes less money than me, or is worth less money than me, tell me what to do. Especially not somebody who gets paid by the hour. And further, the Judge ordered me to stay in California. Goodbye.

(*Id.*) Emmings then posted a screenshot of the email correspondence to Facebook and titled the post "War." (*Id.*)

The ROV further characterized Emmings' behavior as absconding, due to his "absolute lack of participation." (*Id.*) On October 26, 2023, PO Lizotte spoke with Emmings on the phone. PO Lizotte described Emmings as talking very fast as he attempted to record the conversation. PO Lizotte documented the following responses to his question of whether Emmings would comply with supervision:

What are you trying to fucking do?

I haven't thought about that bitch in six years.

We have a judge who shut down my business.

This is a conspiracy to protect David Glaser.

The guy denied me a loan.

This is not how people should have to live in America.

This is my first felony conviction.

They were doing this to the Jewish people in 1930. Shutting down their business’.

This led to concentration camps.

I started my own business in Missoula and made half a million dollars.

This Judge doesn’t know how much I’m worth.

When the government starts acting like this, this is why people leave the country.

This is what you motherfuckers do.

What is the threat? What are you suggesting? that I’m crazy.

So, tell me, what bitch ass cop do I need to check in with?

What police station do I need to check in with?

You are messing with a person who has not committed a crime.

You make \$23 dollars an hour. You are not worth anything.

How are you qualified to make decisions over a person’s life.

You are a fucking moron. Point blank. Go fuck yourself.

(*Id.*) PO Lizotte concluded that Emmings did not respect the court’s authority to place him on community corrections, and, due to his “defiant and apathetic disposition, any form of community corrections has a zero percent chance of being fruitful.” (*Id.*)

Judge Halligan recused herself after the petition to revoke was filed, and jurisdiction was assumed by the Honorable Judge Larson. (Doc. 130.) Judge Larson issued a \$250,000 bench warrant for Emmings' arrest. (Doc. 131.) Emmings was arrested on February 26, 2024. (Doc. 132.)

Emmings filed a motion to dismiss the revocation proceedings. (Doc. 140.) He argued that the petition to revoke should be dismissed because the district court lacked authority to revoke the conditional discharge under Mont. Code Ann. § 46-23-1020. (*Id.*) He also argued that the reimposition of sentence was invalid as it provided impossible conditions to follow. (*Id.*)

The State responded that Emmings had failed to appeal the reimposition of sentence as provided in Mont. Code Ann. § 46-20-101 and, therefore, had waived his challenge to the decision in future proceedings. (Doc. 145.) The State further explained that Emmings' conditional discharge was properly revoked pursuant to Mont. Code Ann. § 46-23-1020(1)(b). (*Id.*) The State maintained that "[§] 46-23-1020(1)(b) explicitly provides [for] a revocation of a conditional discharge even for a resident of another state by referencing subsection 2." (*Id.*)

IV. The order to dismiss the revocation and strike the reimposition of sentence

Judge Larson adopted Emmings' reasoning from the motion to dismiss almost verbatim. Judge Larson did not consider the State's argument regarding the

doctrine of law of the case. (*See generally* Doc. 147, attached as App. A.) Judge Larson concluded that Emmings' residence being outside the state of Montana after he was released from probation "must be construed as a discharge of the imposed sentence." (*Id.*) The court explained that "[o]nce Mr. Emmings left the State of Montana there was no time remaining on his sentence and it would not be subject to revocation as subsection 2 only applies to the time remaining on his sentence." (*Id.*)

Without analysis, the district court cited to *State v. Muhammad*, 2002 MT 47, 309 Mont. 1, 43 P.3d 318, and found that the language permitting Emmings to remain in California constituted a banishment. (*Id.*) The district court found that the previous order on the reimposition of the probationary sentence required Emmings to follow conditions that were "unquestionably illegal, contradictory, and made it impossible for Mr. Emmings to be able to stay in compliance with probation." (*Id.*) Judge Larson found that Emmings was "given an impossible situation when he was ordered to be on probation, to not follow the rules, but to also follow all the rules." (*Id.*) The court thus ordered that the petition to revoke be dismissed and the order reimposing Emmings' probationary sentence be stricken. (*Id.*)

STANDARD OF REVIEW

This Court reviews a district court's decision on a motion to dismiss de novo for correctness. *State v. Madsen*, 2013 MT 281, ¶ 6, 372 Mont. 102, 317 P.3d 806 (citations omitted). The interpretation of a statute is a question of law this Court reviews for correctness. *City of Missoula v. Fox*, 2019 MT 250, ¶ 8, 397 Mont. 388, 450 P.3d 898 (citation omitted).

SUMMARY OF THE ARGUMENT

Emmings waived his right to challenge Judge Halligan's order reimposing conditional discharge when he failed to appeal. Under the doctrine of law of the case, because Emmings did not appeal the district court's Order Reimposing Probation Supervision, he is deemed to have waived the right to attack that decision at a future point in his case. This Court should reverse Judge Larson's order dismissing the petition to revoke and striking the reimposition of probation.

This Court should reverse the district court's statutory interpretation construing an out-of-state offender's sentence "as a discharge of the imposed sentence" thus ending any time remaining on the sentence, effectively terminating it and preventing revocation. The district court erred in its review of Mont. Code Ann. § 46-23-1020(1)(b) and omitted language that conditions an out-of-state offender's discharge from supervision by the DOC.

The plain meaning of the statute provides that both in-state and out-of-state offenders receiving a conditional discharge of their sentence pursuant to Mont. Code Ann. § 46-23-1011 are subject to the same revocation of their discharged sentence if they are charged with any felony offense, charged with a high misdemeanor, or violate any condition imposed by a district court. If this Court finds that the language contained in Mont. Code Ann. § 46-23-1020(1)(b) is ambiguous, the legislative history provides that all offenders granted conditional discharge must comply with conditions imposed by the district court or be subject to revocation. Accordingly, this Court should avoid the absurd interpretation that would allow an offender who is granted conditional discharge to leave the state to discharge his full sentence while an in-state offender remains on supervision for the same crimes.

Additionally, in simply adopting the Emmings' brief, the district court erred in concluding that he was banished from Montana, effectively making his conditions impossible, and thus illegal. Nothing in the record supports the district court's conclusion because Judge Halligan *permitted* Emmings to remain in California where he was currently residing. She did not *require* him to stay either in California or out of Montana. Judge Larson failed to consider the very order he struck from the record, which allowed Emmings to reside in California and required the DOC to facilitate supervision while he was out of state. Finally, it was

Emmings' failure to engage that formed the basis of his noncompliance, not the conditions imposed by Judge Halligan. This Court should reverse Judge Larson's order and reinstate Emmings' formal probation status.

ARGUMENT

I. Emmings waived this argument when he did not appeal the district court's final order reimposing a formal probation sentence.

The scope of an appeal by a defendant in a criminal matter is governed by Mont. Code Ann. § 46-20-104, which provides that “[a]n appeal may be taken by the defendant only from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant.” A defendant has 60 days to appeal. M. R. App. P. 4.

This Court has adopted the doctrine of law of the case in criminal matters. *See State v. Gilder*, 2001 MT 121, 305 Mont. 362, 28 P.3d 488; *State v. Wooster*, 2001 MT 4, 304 Mont. 56, 16 P.3d 409; *State v. Woods*, 285 Mont. 46, 945 P.2d 918 (1997); *State v. Black*, 245 Mont. 39, 798 P.2d 530 (1990). Under the law of the case doctrine, a legal decision made at one stage of a case, which is not appealed when the opportunity to do so exists, becomes the law of the case. *McCormick v. Brevig*, 2007 MT 195, ¶ 38, 338 Mont. 370, 169 P.3d 352 (citations omitted). The party that does not appeal is deemed to have waived the right to

attack that decision at a future point in the case, whether to the Montana Supreme Court or in future proceedings at the district court level. *Id.* ¶¶ 38-39. That party is thus bound by the earlier decision. *Id.* ¶ 39.

Judge Halligan entered her Order Reimposing Probation Supervision on August 29, 2023. (Doc. 126.) The order placed Emmings back on formal supervision under the DOC, thus affecting his substantial rights. *See* Mont. Code Ann. § 46-20-104. Emmings informed the district court that he was considering an appeal of the order revoking the conditional discharge. (Tr. at 95.) Emmings' time for appeal ran on October 28, 2021. On December 18, 2023, the State filed a petition to revoke Emmings' probationary sentence. (Doc. 129.) Emmings then challenged the district court's revocation of conditional discharge in his petition to revoke proceeding. (Doc. 140.) The State contested the filing, citing the doctrine of law of the case as a procedural bar. (Doc. 145.)

The district court failed to apply the law of the case doctrine to the untimely challenge. This Court should find that Emmings waived his secondary challenge when he failed to appeal the order reimposing probation supervision. Emmings was bound by Judge Halligan's order reimposing supervision and Judge Larson was foreclosed from reconsidering the issue. *See Gilder*, ¶ 15. This Court should reverse Judge Larson's order.

II. This Court should reverse the district court’s order dismissing the petition to revoke and striking the order reimposing Emmings’ probationary sentence.

Should this Court find that Emmings was entitled to challenge the order reimposing his probationary sentence, this Court should still reverse the district court’s order because it erroneously determined Emmings’ sentence was fully discharged, contrary to the rules of statutory construction. Additionally, this Court should find that the district court erred in concluding that Emmings was banished from Montana, and that, as a result, the conditions of his sentence were impossible to complete.

A. The district court incorrectly interpreted the plain language of Mont. Code Ann. § 46-23-1020(1)(b).

This appeal presents a question of statutory interpretation. Statutory construction requires a district court to simply “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.” *Fox*, ¶ 18. “The starting point for interpreting a statute is the language of the statute itself.” *State v. Christensen*, 2020 MT 237, ¶ 95, 401 Mont. 247, 472 P.3d 622. The plain meaning of the statute controls when the “intent of the Legislature can be determined from the plain meaning of the words used in the statute.” *Id.*

This Court’s inquiry begins with the words of the statutes themselves: “The legislative intent is to be ascertained, in the first instance, from the plain meaning

of the words used.” *State v. Heath*, 2004 MT 126, ¶ 25, 321 Mont. 280, 90 P.3d 426 (citation omitted). If the statutory language is “clear and unambiguous, no further interpretation is required.” *Infinity Ins. Co. v. Dodson*, 2000 MT 287, ¶ 46, 302 Mont. 209, 14 P.3d 487. But, “[w]hen the plain meaning of a statute is subject to more than one reasonable interpretation,” this Court will “examine the legislative history to aid [in its] interpretation.” *State v. Legg*, 2004 MT 26, ¶ 27, 319 Mont. 362, 84 P.3d 648.

“Statutory construction is a ‘holistic endeavor’ and must account for the statute’s text, language, structure, and object.” *Heath*, ¶ 24 (internal citation omitted). “We construe a statute by reading and interpreting the statute as a whole, ‘without isolating specific terms from the context in which they are used by the Legislature’. . . . Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it.” *Montana Sports Shooting Ass’n v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003 (internal citations omitted).

The duty of this Court is to “give effect to the purpose of the statute.” *State v. Triplett*, 2008 MT 360, ¶ 25, 346 Mont. 383, 195 P.3d 819 (internal citations omitted). As this Court has explained:

Indeed[, s]tatutes do not exist in a vacuum, [but] must be read in relationship to one another to effectuate the intent of the statutes as a whole. This Court will, if possible, construe statutes so as to give effect to all of them. When more than one statute applies to a given situation, such construction, if possible, is to be adopted as will give effect to all.

State v. Marker, 2000 MT 303, ¶ 25, 302 Mont. 380, 15 P.3d 373 (quoting *Skinner Enters. v. Lewis & Clark Cnty. Bd. of Health*, 286 Mont. 256, 271-72, 950 P.2d 733, 742 (1997)).

As early as 1893, this Court recognized the role of the Legislature in defining a crime and establishing its penalty.

It is the legislature, not the court, which is to define a crime, and ordain its punishment. It is said that, notwithstanding this rule, the intention of the lawmaker must govern in the construction of penal as well as other statutes. This is true. But this is not a new independent rule, which subverts the old. *It is a modification of the ancient maxim, and amounts to this: that, though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend.* The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction.

State v. Hayes, 13 Mont. 116, 120, 32 P. 415, 416 (1893) (emphasis added).

Montana Code Annotated § 46-23-1020 provides the basis for revocation of a conditional discharge. It states:

- (1)(a) A conditional discharge granted under 46-23-1011 or 46-23-1021 is:
 - (i) a discharge from supervision by the department for the time remaining on the sentence imposed if the probationer or parolee complies with all the conditions imposed by the district court or the board; and
 - (ii) a release from the obligation to pay supervision fees imposed as part of a sentence or as terms of parole or probation.

(b) *If an individual who has been granted a conditional discharge under 46-23-1011 or 46-23-1021 becomes a resident of another state, the conditional discharge must be construed as a discharge of the imposed sentence subject to revocation as provided in subsection (2).*

(2) A conditional discharge may be revoked if, within the time remaining on the sentence that was conditionally discharged, the individual:

(a) is charged with a felony offense;

(b) is charged with a misdemeanor offense for which the individual could be sentenced to incarceration for a period of more than 6 months; or

(c) violates any condition imposed by the district court or the board.

(3) A sexual or violent offender who is subject to lifetime supervision by the department is not eligible for a conditional discharge from supervision.

(Emphasis added.)

Here, the district court misapplied a fundamental canon of statutory interpretation by omitting language contained in statute central to its determination of plain meaning. Mont. Code Ann. § 1-2-101. When the district court construed Emmings' move out of state as a full discharge of his sentence, the district court ignored the remaining language conditioning the discharge for an out-of-state offender. The language omitted by the district court imposes the same conditions for revocation of a conditional discharge regardless of the offender's residence as evidenced by the language "*subject to revocation as provided in subsection (2).*" Mont. Code Ann. § 46-23-1020(1)(b) (emphasis added). That language necessarily requires a district court to then consider "subsection (2)," which provides that an offender's conditional discharge may be revoked if the offender commits a felony,

high misdemeanor, or, like here, violates any condition imposed by the district court. Mont. Code Ann. § 46-23-1020(2).

As discussed by Judge Halligan in her Order on Reimposition of Probation Supervision, the original conditions imposed in the Amended Judgment remained in effect during Emmings' conditional discharge, except for those that were "exclusive to active supervision." (App. B.) The original conditions included his business-only restriction on social media and the mandate that he conduct himself as a good citizen. (Doc. 82.) Neither condition required the DOC to actively supervise Emmings.

After the evidentiary hearing on August 25, 2023, Judge Halligan found conclusive evidence that Emmings violated these conditions with his repeated, obsessive rants and threats on social media against Kato, Glaser, and others. (Doc. 82; Tr. at 92.) The State provided evidence that the violations had been occurring prior to his conditional discharge. (Doc. 126.) The testimony established that Emmings communicated a threat to Kato's life to his parents in an attempt to coerce money from them. (Tr. at 45-47; State's Ex. 12.) Judge Halligan rightfully concluded she had to consider the safety of the community given the nature of Emmings' communications. (Tr. at 93.)

Judge Halligan's order faithfully applied the plain language of Mont. Code Ann. § 46-23-1020 to achieve a result that effectuated the plain language of the

statute. Judge Halligan held an evidentiary hearing to ensure due process and gave significant discretion to the DOC to decide exactly which conditions Emmings would be under in this unique circumstance while he continued to reside in California. As Judge Halligan concluded, continued supervision was absolutely necessary given the repeated and increasingly violent threats Emmings made toward many people in Missoula.

Judge Larson's order, on the other hand, simply adopted Emmings' briefing, providing a fundamentally flawed statutory analysis. Judge Larson wrongly concluded that Emmings was not subject to revocation of his conditional discharge. The district court omitted consideration of the conditional language immediately following the discharge provision regarding Emmings' status as an out-of-state offender. Contrary to Judge Larson's findings, "the statutory language is 'plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe.'" *State v. Wolf*, 2020 MT 24, ¶ 15, 398 Mont. 403, 457 P.3d 218 (citations omitted). Based on the plain and unambiguous language of the statute, this Court should reverse Judge Larson's holding discharging Emmings' suspended sentence and dismissing the petition to revoke.

///

B. When read in conjunction with related statutes, the language in Mont. Code Ann. § 46-23-1020(1)(b) reaffirms that a conditional discharge for an out-of-state offender does not terminate the offender’s sentence.

As noted by the Court, this statute does not exist in a vacuum and to ascertain the plain meaning of the terms, this Court will construe the statutes to give effect to all. *Marker*, ¶ 25; *see also* Mont. Code Ann. § 1-2-101 (“Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.”).

The Montana Legislature has used different terms to describe the expiration of a criminal sentence. “It is a settled rule of statutory construction that this Court interprets ‘related statutes to harmonize and give effect to each. Different language is to be given different construction.’ Where the Legislature used different language in the same connection in related statutes, it is presumed it intended a different meaning and effect.” *Bullock v. Fox*, 2019 MT 50, ¶ 59, 395 Mont. 35, 435 P.3d 1187 (internal citations omitted).

The Montana Legislature uses the word “termination” in related statutes that discuss the end of the offender’s sentence, not discharge. Montana Code Annotated § 46-18-208 describes the process for early *termination* of the remaining portion of a suspended or deferred sentence. The statute provides that a party may file a motion to terminate the remaining portion of the suspended or deferred sentence if the defendant was granted a conditional discharge from supervision under Mont.

Code Ann. § 46-23-1011 and demonstrated compliance for at least 12 months on court supervision. Mont. Code Ann. § 46-18-208.

Similarly, the Montana Constitution provides that an offender's rights are fully restored "by the termination of state supervision for any offense against the state." Mont. Const. art. II, § 28, cl. 2. When the three statutes and the constitutional provision are read together, Mont. Code Ann. §§ 46-23-1011, 46-23-1020, and 46-18-208 and Mont. Const. art. II, § 28, cl. 2, provide the roadmap to an early termination of sentence and a full restoration of rights, provided that the offender was not revoked pursuant to Mont. Code Ann. § 46-23-1020(2).

It follows that Judge Larson's order construing the "discharge" as a termination was plainly incorrect. As provided in the statutory scheme referenced above, for Emmings' sentence to be completed, he would have had to 1) successfully petition for conditional discharge pursuant to Mont. Code Ann. § 46-23-1011; 2) successfully complete 12 months on his conditional discharge without revocation pursuant to Mont. Code Ann. § 46-23-1020; and 3) successfully petition for termination of the remaining portion of his suspended sentence pursuant to Mont. Code Ann. § 46-18-208. Only then would Emmings' sentence be complete and restoration of his rights, as contemplated in Mont. Const. art II, § 28, cl. 2, would occur. This is contrary to the language at issue in Mont. Code Ann. § 46-23-1020(1)(b), contemplating a conditional discharge of an out-of-state

offender as a “discharge of the imposed sentence subject to revocation as provided in subsection (2).” Based on the clear distinction between “discharge” and “termination” as used in related statutes, this Court should follow the mandate ignored by Judge Larson and construe the terms to have a “different meaning and effect.” *See Bullock*, ¶ 59. This Court should reverse Judge Larson’s finding that Emmings’ conditional discharge is to be construed as a termination and reinstate Judge Halligan’s Order Reimposing Probation Supervision.

C. The legislative history of Mont. Code Ann. § 46-23-1020(1)(b) does not support the district court’s statutory interpretation.

Alternatively, if this Court concludes both that the plain language in Mont. Code Ann. § 46-23-1020(1)(b) may be subject to the State’s proposed interpretation and that an out-of-state offender’s sentence is discharged upon leaving Montana, this Court could be aided in examining the legislative history of the statute.

Although statutory interpretation begins with the text of a statute, “it does not necessarily end there.” *State v. Quesnel*, 2009 MT 388, ¶ 16, 353 Mont. 317, 220 P.3d 634. When this Court is unable to determine the Legislature’s intent from the text, it turns to the statute’s legislative history. *Id.* Legislative history is defined as “[t]he background and events leading to the enactment of a statute, including

hearings, committee reports, and floor debates.” Black’s Law Dictionary (7th ed., 1999).

Entitled “An act defining a ‘conditional discharge’ for probation and parole purposes; and establishing grounds for revoking a conditional discharge[.]” and sponsored by Representative Deborah Kottel, House Bill 177 (HB 177) did exactly that. At the House Judiciary hearing, Pam Bunke, an administrator with the DOC, spoke as a proponent. Mont. H. Jud. Comm., Hr’g on H.B. 177, 61st Leg. Sess. (Jan. 19, 2009) at 11:51-15:21.² Bunke stated that “all offenders” granted a conditional discharge from supervision must continue to comply with all the standard and special conditions set by the DOC, the court, or the parole board, except for the conditions of travel and monthly reporting. *Id.* at 13:37-13:53.

During the Senate Judiciary hearing on HB 177, Representative Kottel stated: “When people are conditionally discharged, sometimes they relocate. And what is their status when they move to another? And this just makes clear that their status is that it is going to be construed as a discharge of the sentence, subject to revocation.” Mont. S. Jud. Comm., Hr’g on H.B. 177, 61st Leg. Sess. (Mar. 9,

² Available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20090119/-1/28464>.

2009) at 10:21:14-10:21:32.³ Ron Alsbury from the DOC reiterated Bunke’s statement that “all offenders” on conditional discharge remain subject to the conditions imposed. *Id.* at 10:24:14-10:24:25.

As specifically stated by Representative Kottel and confirmed by proponents from the DOC, the legislative history shows that the intent of HB 177 was to require all offenders on conditional discharge to be subject to revocation, including those who move out of state. This Court should make clear, just as Representative Kottel did, that an out-of-state offender who has conditionally discharged his sentence is still subject to revocation if he violates any of the terms of Mont. Code Ann. § 46-23-1020(2).

D. The Legislature did not intend to enact a meaningless or absurd statute.

“Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it.” *Fox*, ¶ 18. Further, statutes must be “liberally construed with a view to effect their objects and to promote justice.” Mont. Code Ann. § 1-2-103.

Judge Larson’s interpretation would lead to an absurd result where an offender subject to a conditional discharge needs only to move out of state for an

³Available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20090309/-1/23149>.

indeterminate and undefined amount of time to fully end their criminal sentence. Although a conditional discharge is a step down from formal probation, the offender remains under court supervision and subject to the conditions of the sentence, as described in the legislative history.

Furthermore, Judge Larson’s interpretation renders a portion of Mont. Code Ann. § 46-23-1020(1)(b) meaningless. The Legislature specifically included that an offender who moves out of state after obtaining a conditional discharge is “subject to revocation as provided in subsection (2).” Mont. Code Ann. § 46-23-1020(1)(b). In turn, omitting the language in Mont. Code Ann. § 46-23-1020(1)(b) would make the reference to subsection (2) have no effect on out-of-state offenders. This Court operates under the presumption that the Legislature does not pass meaningless legislation and will construe a statute to “avoid any statutory interpretation that renders any sections of the statute superfluous and does not give effect to all of the words used.” *State v. Ohl*, 2022 MT 241, ¶ 11, 411 Mont. 52, 521 P.3d 759.

A reasonable interpretation of the statute would foreclose such loopholes that the Legislature could never have intended. The “law favors rational and sensible construction.” *Yunker v. Murray*, 170 Mont. 427, 434, 554 P.2d 285 (1976) (citation omitted); *see also* Mont. Code Ann. § 1-3-233 (“Interpretation must be reasonable.”). Judge Halligan’s interpretation relied on the plain meaning

and gave effect to the conditional language in Mont. Code Ann. § 46-23-1020(1)(b) related to an offender who moves out of state.

Judge Halligan’s interpretation also gave effect to Mont. Code Ann. § 46-23-1020(2). To argue that a “discharge of the imposed sentence” constitutes a discharge of all conditions of a sentence would be absurd when violating “any condition imposed by the district court” is one of the three means of revoking a conditional discharge. Judge Larson’s blanket adoption of Emmings’ brief foreclosed any analysis of this issue as Emmings’ analysis stopped halfway through the statute, erroneously concluding that the term discharge was synonymous with termination and failing to consider the remaining language in Mont. Code Ann. § 46-23-1020.

This Court should reasonably give effect to the Legislature’s broad jurisdictional grant of authority to revoke an offender’s conditional discharge, even when the offender has removed himself or herself from the state. *See* Mont. Code Ann. § 3-1-113. This Court should also reasonably give effect to the rule that statutes should be construed to promote justice, and the State should be able to pursue justice regardless of the residency status of those who are still under court supervision based on offenses committed in Montana. *See* Mont. Code Ann. § 1-2-103.

III. Judge Larson erred in concluding that Emmings was banished from Montana and his conditions were impossible.

This Court has repeatedly discouraged a district court’s verbatim adoption of the prevailing party’s reasoning in its order. *Planned Parenthood of Montana v. State*, 2024 MT 228, ¶ 17, 418 Mont. 253, 557 P.3d 440 (collecting cases).

Although not an error *per se*, a district court’s order must still be supported by the evidence. *Id.*; *In re Marriage of Frank*, 2022 MT 179, ¶ 84, 410 Mont. 73, 517 P.3d 188. By adopting Emmings’ briefing, the district court adopted conclusions of law that were not supported by the record.

Judge Larson cited to *State v. Muhammad*, 2002 MT 47, 309 Mont. 1, 43 P.3d 318, in support of his position that Emmings was banished from Montana during the August 25, 2023 hearing. In *Muhammad*, the district court ordered that “[t]he [d]efendant may not reside within Cascade County or work here.” *Id.* ¶ 12. At the time of sentence, Muhammad resided in Cascade County. *Id.* ¶ 28. The facts of *Muhammad* are vastly different from the facts at issue here.

The record provides that at the end of the August 25, 2023 evidentiary hearing, the district court revoked Emmings’ conditional discharge and ordered him to make contact with Probation and Parole. (August 25, 2023 Tr. at 92.) At the time of the revocation, Emmings lived in California. (*Id.* at 91.) The district court “permitted [Emmings] to remain in the State of California” and further explained that there was no requirement for him to be in the State of Montana. (*Id.* at 92.)

Although the district court explicitly ordered that it would “not entertain a solution that *require[d]* [Emmings] to relocate to Montana,” it did not *prohibit* Emmings from returning to the state if he chose to do so. (App. C (emphasis added).) The district court imposed all prior conditions, “other than those that would directly require him to be in the State of Montana” (Tr. at 94.) The order required both Emmings and the DOC to reestablish supervision in a way that allowed Emmings to remain in California, where he was already residing. (App. C.)

This Court has recently addressed the issue of impossible conditions imposed during an offender’s suspended sentence. In *State v. Villalobos*, 2024 MT 301, 419 Mont. 256, 560 P.3d 617, the district court ordered the defendant to complete the treatment court as a condition of his suspended sentence. *Id.* ¶ 14. This Court reasoned that if it became impossible for Villalobos to complete the treatment court because he failed to qualify for admission, the condition had to be stricken. *Id.* This Court, however, also noted:

The impossibility to complete treatment court for failure to qualify for admission, however, must not be created by the defendant’s own poor efforts. The defendant must make a good faith effort to apply and complete the pre-admission tasks and requirements imposed by the treatment court in a timely manner and refrain from commission of a disqualifying offense as determined by the treatment court committed after execution of a plea agreement or the imposition of the condition.

Id.

Here, Emmings' conditions were not impossible. The district court ordered him to reestablish supervision by August 31, 2023, and he failed to do so. (Docs. 126, 129.) Judge Halligan specifically indicated all conditions, "other than those that would directly require him to be in the State of Montana," were imposed. (Tr. at 94.) The supervision was to be handled remotely. (*Id.* at 94.) The conditions imposed by Judge Halligan were minimal. (*See* Doc. 82.) In addition, Emmings was to apply for the interstate compact and cooperate if he was accepted. (Doc. 126.) In the alternative, he was to make "periodic reports as directed by his probation officer" in Montana. (Tr. at 93.) Judge Halligan reaffirmed the order that Emmings was to refrain from posting about anything other than his business on social media. (*Id.*)

In addition to limiting the conditions Emmings would be subject to, Judge Halligan ordered that Emmings and the DOC work together to figure out a path for compliance. (Doc. 122.) If questions regarding the conditions arose, Emmings was to consult with the probation officer. (App. C.) Emmings merely needed to remain in contact and cooperate with the DOC to be in compliance with his conditions, but he refused.

PO Lizotte repeatedly reached out to Emmings to encourage him to apply for the interstate compact, sign rules of probation, and assist in formulating a plan for his supervision. (Doc. 129.) Instead, Emmings belligerently opposed any form

of supervision by the DOC, both in writing and over the phone. (*Id.*) Emmings again engaged in a series of rants related to his perceived injustice and his unwillingness to conform his behavior to the court's order. (*Id.*) This repeated pattern of an "absolute lack of participation" led PO Lizotte to characterize Emmings' behavior as absconding. (*Id.*) Emmings failed to reengage in supervision, as ordered by the court, due to his "defiant and apathetic disposition," not because the conditions were impossible. (*Id.*)

Not only was Judge Larson's statutory analysis fundamentally flawed, but he also simply adopted Emmings' brief on a myriad of faulty conclusions unrelated to statutory construction. Judge Larson's failure to consult the record led to his wholly wrong conclusion that Emmings was "banished" when, in reality, Judge Halligan had provided Emmings with a significant benefit in allowing him to remain where he wished, in California. Judge Halligan could have ordered Emmings to report to Montana and remain here, where his conditions of supervision could have been more stringent. Rather, Emmings was to cooperate with his probation officer and engage in remote supervision. It was up to the DOC to figure out a suitable method of supervision, but without Emmings' engagement, the DOC's efforts were futile, regardless of the conditions imposed. This Court should find that Judge Larson's blind adoption of Emmings' argument was a

violation and reverse the district court's holding that Emmings was banished, leading to a set of impossible conditions.

CONCLUSION

This Court should reverse the district court's January 29, 2025 order dismissing Emmings' Petition to Revoke and striking the Order Reimposing Probation Supervision.

Respectfully submitted this 25th day of April, 2025.

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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 9,181 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ *Selene Koepke*
SELENE KOEPKE

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0131

STATE OF MONTANA,

Plaintiff and Appellant,

v.

ANDREW EMMINGS,

Defendant and Appellee.

APPENDICES

Larson order (Doc. 147).....	Appendix A
Halligan order resuming supervision (Doc. 122).....	Appendix B
Halligan order (Doc. 126)	Appendix C

CERTIFICATE OF SERVICE

I, Selene Marie Koepke, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 04-25-2025:

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