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Case Number: DA 24-0054

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0054

CITY OF WHITEFISH,

Plaintiff and Appellee,

v.

THOMAS G. CURRAN,

Defendant and Appellant.

BRIEF OF APPELLEE

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. § 61-8-722(1) (2019)'s $600 mandatory minimum fine is facially unconstitutional under Montana's Excessive Fines Clause.

STATEMENT OF THE CASE

The City of Whitefish charged Thomas G. Curran (Curran) with driving under the influence of alcohol or drugs (DUI), first offense, and reckless driving. (Doc. 0.01); *City of Whitefish v. Curran*, 2023 MT 118, ¶ 2, 412 Mont. 499, 531 P.3d 547. Curran pleaded guilty to an amended charge of Operation of Noncommercial Vehicle by Person with Alcohol Concentration of 0.08 or More (DUI *per se*), first offense. *Curran*, ¶ 2. At sentencing, the municipal court imposed a sentence that included the statutory mandatory minimum fine of $600. *Curran*, ¶ 4. The municipal court waived the statutory surcharges after conducting an ability to pay analysis. *Curran*, ¶ 4.

Curran's counsel requested that the municipal court suspend Curran's fine on the conditions that he not drink alcohol and remain law abiding. (8/11/20 Audio at 19:00-20:24.) The municipal court declined, noting that it did not have discretion to forgo ordering the mandatory minimum fine. *Curran*, ¶ 4. The Flathead County District Court affirmed the municipal court's order. *Curran*, ¶¶ 5-6.

Curran subsequently appealed the district court's order affirming the municipal court's imposition of the mandatory fine to this Court. This Court reversed imposition of Curran's fine based on the municipal court's incorrect conclusion "that it did not have discretion to suspend the fine or to enforce the fine through an alternative method of payment," and remanded the matter to the district court to remand to the municipal court "for consideration of alternative methods authorized by statute for satisfying the fine."[1] *Curran*, ¶¶ 1, 30.

On remand to the municipal court, the municipal court imposed a $600 fine pursuant to Mont. Code Ann. § 61-8-722(1) (2019),[2] and then suspended the entire fine conditioned on Curran's completion of the Prime for Life course, a condition

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[1] In *Curran*, this Court held that imposition of the $600 fine "was statutorily authorized and was not illegal." *Curran*, ¶ 20. In reaching this conclusion, this Court reiterated "that a sentencing court does not exercise discretion when it imposes a mandatory fine, 'irrespective of the defendant's ability to pay.'" *Curran*, ¶ 21 (citing *State v. Ingram*, 2020 MT 327, ¶ 9, 402 Mont. 374, 478 P.3d 799; *State v. Mingus*, 2004 MT 24, ¶ 15, 319 Mont. 349, 84 P.3d 658; *State v. Reynolds*, 2017 MT 317, ¶ 19, 390 Mont. 58, 408 P.3d 503). Exactly nine months after this Court issued its decision in *Curran*, this Court issued its opinion in *State v. Gibbons*, 2024 MT 63, ¶ 64, 416 Mont. 1, 545 P.3d 686, which overruled *Mingus*. The decision in *Gibbons*, however, did not explicitly state that the cases that relied on *Mingus*, including *Curran*, were also overruled. *See Gibbons*, ¶ 64.

[2] Curran provides that on remand he was sentenced pursuant to Mont. Code Ann. § 61-8-1007(2)(a)(i) (2021), the statute that replaced Mont. Code Ann. § 61-8-722(1) (2019) after it was repealed. (Appellant's Br. at 1.) Although the statutes are the same, Curran had to be sentenced pursuant to Mont. Code Ann. § 61-8-722(1) (2019) because his offense occurred on March 8, 2020, and the portion of his original, unchallenged sentence was imposed pursuant to Mont. Code Ann. § 61-8-722(1) (2019).

of his original sentence. (Doc. 0.16; 9/13/23 Audio at 5:12-6:00.) Curran timely appeals the district court's order affirming the municipal court's imposition of the $600 suspended fine. (*See* Docs. 3, 4.)

STATEMENT OF THE FACTS

On March 8, 2020, Curran was arrested in Whitefish for the offenses of DUI and reckless driving. (Doc. 0.01.) The arresting officer, Whitefish Police Department Sergeant Rob Veneman, noted Curran had been driving "completely on the right shoulder of Spokane" Avenue and that he exhibited several signs of severe intoxication. (*Id.*) Sergeant Veneman issued Curran a citation that required him to appear in the Whitefish Municipal Court on March 18, 2020, at 1:30 p.m. (*Id.*)

Curran failed to appear at his initial appearance on March 18, 2020. (3/18/20 Audio.) Curran appeared in court on May 29, 2020, and pleaded not guilty to the offenses. (5/29/20 Audio at 2:10-2:15.) Curran had previously posted a surety bond of $1,335. (*Id*. at 2:41-3:05.) However, because of Curran's failure to appear, the surety had forfeited the bond. (*Id*. at 8:00-8:49.)

The municipal court inquired about Curran's ability to post an additional cash bond. (*Id*. at 8:50-9:05.) The municipal court explained to Curran that the cash bond would be refunded to him in full if the case were dismissed, but it could

also be used toward payment of a fine upon conviction. (*Id*. at 9:35-10:15.) The municipal court asked Curran if he could post a $1,000 bond. (*Id*. at 10:16-10:21.) Curran informed the municipal court that it would take a couple of days for him to post the bond because he had rent due and possibly some medical bills. (*Id*. at 10:23-10:45.) Curran offered that he could come up with the bond by Wednesday of the following week. (*Id*. at 11:10-11:25.) At some point over the next couple of days, Curran posted the $1,000 cash bond. (*See* 8/11/20 Audio at 26:18-26:37.)

Curran appeared in court on August 11, 2020, with his counsel, at a change of plea hearing. (8/11/20 Audio.) Curran pleaded guilty to an amended charge of DUI *per se*. *Curran*, ¶ 2. The plea agreement required Curran to pay a $600 fine and $85 in surcharges. *Curran*, ¶ 2. Curran's counsel requested that the municipal court conduct an inquiry into Curran's ability to pay the fine and asked that the fine be suspended entirely due to Curran's financial circumstances. *Curran*, ¶ 3.

After Curran pleaded guilty to DUI *per se*, the municipal court agreed to inquire into Curran's ability to pay. (8/11/20 Audio at 5:20-5:27.) In explaining the fine to Curran, the municipal court stated:

> The $600 fine is the minimum amount and that's a mandated amount, um, that is required to be paid by the statute, um, so, I'm not sure whether your ability to pay will have any bearing on, um, I don't know that I have the discretion to suspend that amount. It is mandated by the State.

(*Id*. at 5:30-6:05.)

Nevertheless, the municipal court inquired into Curran's ability to pay. (8/11/20 Audio at 6:06-6:10.) The municipal court asked Curran general questions about his background, prior jobs, marital status, and ability to work. (*Id*. at 6:10-8:20.) Curran reported he was a 73-year-old widower. (*Id.* at 6:12-6:16.) He had one adult daughter living in Portland. (*Id*. at 6:20-6:35.) Curran reported he had graduated college with a bachelor's degree in marketing, and he had held various jobs, including work as a golf professional, work in advertising, work as a stationary engineer in New York City running boiler systems in schools, work in maintenance with the Whitefish school district, and being a caretaker for his ailing wife until she died. (*Id*. at 6:40-8:20.)

After his wife passed away, Curran reported, he became a certified nursing assistant and worked at a veterans' home in Columbia Falls. (8/11/20 Audio at 8:21-8:34.) Curran reported he became sick with "double pneumonia" and "COPD" and spent some time in the hospital in March 2020. (*Id*. at 8:30-8:45.) While in the hospital, Curran was unable to get hold of his employer and was, consequently, terminated from employment. (*Id*. at 8:30-8:45, 15:25-15:55.) Curran reported he did not believe he could go back to work at the veterans' home because of a spinal compression fracture that prevented him from lifting more than 20 lbs. (*Id*. at 8:45-9:15.) Curran reported that he could have spinal surgery, but

that he was opting not to have the surgery because he preferred to just deal with the pain. (*Id*. at 9:15-9:45.)

The municipal court inquired whether Curran would be able to return to work. (8/11/20 Audio at 9:55-10:05.) Curran reported he was not sure what he would be able to do for work because of his lifting restrictions. (*Id*. at 10:05-10:45.) Prior to losing his job at the veterans' home, Curran was earning approximately $1,200 per month from that employment and $1,105 per month in social security benefits. (*Id*. at 11:15-11:32.) Curran reported he rented a house for $650 per month and he owned two vehicles, but one of them was not operational. (*Id*. at 11:45-12:13.) Curran reported he did not have any savings. (*Id*. at 12:25-12:32.)

After the municipal court concluded its questions, Curran's counsel asked some follow-up questions. (8/11/20 Audio at 12:50.) Curran agreed his only monthly income at the time of the hearing was from social security benefits. (*Id*. at 12:50-12:55.) He reported his expenses exceeded his income every month. (*Id*. at 12:55-13:02.) Curran stated he had been receiving family assistance to make ends meet, but he did not know if that would continue. (*Id*. at 13:02-13:10.) He reported his financial situation made him forgo some medications, including a blood thinner. (*Id*. at 13:15-14:00.) Even though his employment had been terminated for not showing up to work while he was in the hospital, Curran did not file for unemployment benefits. (*Id*. at 15:50-16:20.)

Curran reported he had received the first round of COVID-19 stimulus money approximately three months earlier. (8/11/20 Audio at 16:21-16:38.) The municipal court noted that politicians were "talking about another one coming out one of these days." (*Id*. at 16:35-16:43.) Curran noted the speculative nature of any forthcoming stimulus payment, stating "if it comes, it comes," and said he would probably use at least part of the stimulus to pay his sister some money he owed her. (*Id*. at 16:43-17:06.) Curran then stated he "probably would have to get some kind of work, you know, that I can perform, but I don't know what that would be." (*Id*. at 17:07-17:25.)

The municipal court ordered Curran to pay the $600 fine. (8/11/20 Audio at 18:20.) The municipal court stated the fine was not discretionary and the municipal court did not believe it had the authority to forgo the mandatory minimum fine. (*Id*. at 17:45-18:08.) The municipal court agreed to waive the $85 in surcharges. (*Id*. at 18:08-18:15.) The municipal court agreed to let Curran enter a time pay agreement with "minimal payments." (*Id*. at 18:20-18:42.)

The municipal court then noted Curran's testimony about being previously employed and that he would be employable in the future. (8/11/20 Audio at 22:40-22:50.) The municipal court further stated that Curran would likely be eligible for future stimulus money. (*Id*. at 22:50-23:25.) The City then interjected, offering "a solution" to Curran's ability to pay. (*Id*. at 23:30.) The City proffered

that the municipal court could allow Curran two months to see if he would be able to obtain gainful employment and then it could hold a status conference where Curran could provide an update. (*Id*. at 23:30-23:56.) The municipal court noted that was a "good solution" and ordered Curran to pay the $600 fine but set Curran up on a time pay contract where the balance would be due in 60 days with a status hearing to "assess [Curran's] employment at that time." (*Id*. at 24:00-24:41.) The municipal court stated, "if you receive funds in the meantime we will have that in the contract that those funds will be applied to the balance that you owe." (*Id*. at 24:42-24:56.)

After the municipal court imposed the sentence, Curran brought up the topic of the $1,000 bail he had previously posted. (8/11/20 Audio at 26:18-26:37.) The municipal court noted that Curran could apply the bail toward the balance of the fine. (*Id*. at 26:45.) Curran's counsel interjected that Curran needed the money back to "make up for ground he lost because he had to pay that bail." (*Id*. at 26:50-27:07.)

The municipal court asked Curran if there was "some amount" of the bail that could be applied to the fine. (8/11/20 Audio at 27:17-27:23.) Curran agreed that he could pay $300 from the bail toward the fine, leaving a balance of $300, which would be set up on the time pay agreement. (*Id*. at 27:23-27:35.) The municipal court noted the time pay agreement would require the $300 balance to be paid sometime in the "next 60 days." (*Id*. at 27:45-27:59.) The municipal court

concluded that "if you don't receive any stimulus money, if you don't get back to work, if you don't have any other income, then we'll talk about it in 60 days." (*Id.* at 27:57-28:08.)

The next day, on August 12, 2020, the municipal court issued a "Corrected Sentencing Order." (Doc. 0.21.) Regarding Curran's ability to pay, the municipal court stated:

> WHEREAS, the Court found the defendant has the ability to pay fines. Defendant posted a cash bond, has additional sources of income besides social security, and testified to his ability to pay fines in accordance with the time pay agreement executed herewith.

(*Id.*)

The municipal court set a status hearing "regarding time pay review" for October 9, 2020. (*Id.*) The municipal court issued a time pay agreement establishing when Curran would pay the $300 balance. (Doc. 15.) The time pay agreement stated:

> I agree to pay said fine/restitution/cost ordered by this court in the following manner: $600 with $300 due today, August 11th, 2020, with the balance due in full on or before October 9th, 2020. If unable to pay in full, defendant is required to appear for a status hearing on October 9th, 2020 at 9:00 A.M. I understand that I am under court order to pay the fines according to this payment agreement. <u>If I cannot make a payment during any particular month</u> I understand that I am under court order to appear before the Judge <u>during that month</u> and ask for a payment extension. I understand that failure to comply with this order will result in a contempt of court order and a possible jail sentence, my accounts referred to a collection agency, and/or my driver's license being suspended.

This document supersedes all previous pay agreements.

(Doc. 0.15 (emphasis in original).

The same day the municipal court issued its sentencing order, Curran filed a notice of appeal to the district court. *Curran*, ¶ 5. In affirming the municipal court, the district court concluded that the "sentencing condition falls within statutory parameters, was within the [municipal] court's statutory authority, and the [municipal] court followed the mandates of applicable sentencing statutes in imposing the fine." *Curran*, ¶ 6 (internal quotations omitted).

This Court reversed the district court's order affirming the municipal court on June 20, 2023. *Curran*, ¶ 1. This Court remanded the matter ultimately to the municipal court for consideration of "alternative methods by which [Curran] could satisfy his fine other than a dollar-for-dollar payment." *Curran*, ¶ 1.

On remand, the municipal court confirmed with the parties it's understanding that on remand the original sentencing order remained in effect and that the purpose of the instant sentencing hearing was to consider alternatives to the $600 fine. (9/13/23 Audio at 1:00-1:22, 1:53-1:57.) Curran represented that his financial situation had not changed in the two years that his case was pending on appeal. (*Id*. at 2:14-2:23.) Curran's source of income remains social security, with all of his income going towards his living expenses. (*Id*. at 2:24-2:33.) At the end of the month, Curran has approximately $100 to $120 for food. (*Id*. at 2:34-2:41.)

Curran uses a walker and relies on supplemental oxygen. (*Id*. at 2:44-2:50.) Curran is 76 years old. (*Id*. at 5:08-5:11.) Based on this information and the dissenting opinion in *Curran*, Curran objected to the imposition of any fine or alternative to the fine. (*Id*. at 3:00-4:02.)

The City did not object to suspension of the fine on the condition that Curran complete the Prime for Life course, which was ordered as part of Curran's original sentence. (*Id*. at 4:10-4:19.) At the time of this sentencing hearing, Curran had not enrolled in the Prime for Life course because Curran's sentence was stayed pending his appeal. (*Id*. at 4:20-4:56.)

The municipal court explained that it found it most important for any of Curran's available resources to go towards a chemical dependency evaluation and treatment. (*Id*. at 4:26-4:30, 4:57-5:06.) Based on the information presented regarding Curran's medical condition and his ability to pay, the municipal court imposed a $600 fine, suspending it in its entirety, subject to Curran completing the remaining conditions of his original sentence, specifically, that Curran sign up for the Prime for Life course and provide proof of that enrollment to the municipal court within 30 days. (*Id*. at 5:12-6:00.)

Recognizing Curran's concern that it might be difficult for him to timely and affordably find a ride to sign up for the Prime for Life course, the municipal court informed Curran that if it took him longer than 30 days he should contact his

counsel so that counsel could alert the municipal court to afford Curran additional time to enroll in the course. (*Id*. at 6:18-6:48.) The municipal court reiterated that its primary concern for any offender who has been convicted of DUI is that the offender "get at the root of the issue regarding alcohol use," and that is why the municipal court imposed the Prime for Life condition. (*Id*. at 6:49-7:10.) Curran's counsel confirmed with the municipal court that Curran could enroll in an on-line Prime for Life course. (*Id*. at 7:46-8:24.)

Curran appealed the municipal court's imposition of the $600 suspended fine to the district court. (Docs. 0.39, 3.) Curran argued that imposition of the mandatory minimum fine violated the Excessive Fines Clause, Due Process Clause, and Equal Protection Clause of both the United States Constitution and the Montana Constitution. (Doc. 3 at 7.) Curran further asserted that, although the municipal court suspended the $600 fine, it did so conditioned on Curran completing the Prime for Life course, which would cost money to complete. (*Id*. at 8.) The district court affirmed the municipal court's imposition, and subsequent suspension, of the $600 fine on December 1, 2023. (Doc. 4.) The municipal court stayed Curran's sentence pending the instant appeal.[3] (Appellee's App. A.)

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[3] The order, attached as Appellee's App. A, was not filed as part of the record on appeal because it was issued both after the district court affirmed imposition of the fine and Curran filed his notice of appeal to this Court. Curran's counsel does not object to the order being attached as Appellee's App. A.

SUMMARY OF THE ARGUMENT

The district court did not abuse its discretion when, as part of Curran's sentence, it imposed the mandatory minimum $600 fine pursuant to Mont. Code Ann. § 61-8-722(1) (2019). Curran's sentence fell within statutory parameters and was not illegal based on this Court's decision in *Gibbons*, because *Gibbons* held that Mont. Code Ann. § 61-8-731(3) (2019)'s mandatory minimum fine was unconstitutional, with no mention of the constitutionality of Mont. Code Ann. § 61-8-722(1) (2019), the statute under which the district court imposed Curran's $600 fine.

Nor has Curran met his burden of establishing that Mont. Code Ann. § 61-8-722(1) (2019)'s $600 minimum fine violates the Eighth Amendment or art. II, § 22, of the Montana Constitution. The plain language of Mont. Code Ann. § 61-8-722(1) (2019) supports that if the sentencing court elects to impose a fine, the $600 mandatory minimum fine is proportional to a first offense DUI.

Moreover, Curran's reliance on *Gibbons* does not support that Mont. Code Ann. § 61-8-722(1) (2019)'s fine is facially unconstitutional because this Court's decision in *Gibbons* is manifestly wrong. First, Mont. Code Ann. § 46-18-231 does not embody Montana's Excessive Fines Clause. Second, principles of statutory construction support harmonizing Mont. Code Ann. § 61-8-731(3) (2019) with Mont. Code Ann. § 46-18-231. Third, Mont. Code Ann. § 61-8-731(3) (2019)'s

fine is proportional to the gravity of the offense. Fourth, consideration of a defendant's ability to pay, as part of a constitutional excessive fines analysis, constitutes an as-applied, not a facial, constitutional challenge.

Additionally, the record supports that the $600 suspended fine will not cause Curran financial hardship, and that the fine is not unconstitutional as applied to Curran. The municipal court considered Curran's financial circumstances. Based on Curran's ability to pay, the municipal court suspended the $600, subject to the conditions already imposed pursuant to Curran's original sentence which remained unchanged by this Court's decision in *Curran*. As a result, Curran cannot establish that the district court abused its discretion when it imposed the $600 fine pursuant to Mont. Code Ann. § 61-8-722(1) (2019), or that imposition of the suspended fine was disproportionate to his individual circumstances.

STANDARDS OF REVIEW

On appeal from a municipal court, the district court functions as an intermediate appellate court. *City of Helena v. Grove*, 2017 MT 111, ¶ 4, 387 Mont. 378, 394 P.3d 189. This Court reviews decisions by the district court, acting as an appellate court, as if originally appealed to this Court. *City of Kalispell v. Salsgiver*, 2019 MT 126, ¶ 11, 396 Mont. 57, 443 P.3d 504. Accordingly, this Court examines the municipal court record independently of the district court's

decision, applying the appropriate standard of review to its own examination of the record. *Id.*

This Court reviews fines the same as sentencing conditions. *Ingram*, ¶ 8 (citation omitted). This Court reviews for legality and abuse of discretion sentences of less than one year. *Curran*, ¶ 8. Because whether a sentence is legal presents a question of law, this Court employs de novo review to determine whether the sentencing court's interpretation of the law is correct. *Curran*, ¶ 8. A sentencing court abuses its discretion when it acts arbitrarily without employment of conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. *Salsgiver*, ¶ 12.

ARGUMENT

I. Curran has not established that Mont. Code Ann. § 61-8-722(1) (2019) is facially unconstitutional.

A. Curran does not sufficiently argue that Mont. Code Ann. § 61-8-722(1) (2019)'s minimum $600 fine is facially unconstitutional.

Relying on this Court's decisions in *State v. Ber Lee Yang*, 2019 MT 266, 397 Mont. 486, 452 P.3d 897, and *Gibbons*, Curran argues that imposition of the $600 fine mandated by Mont. Code Ann. § 61-8-722(1) (2019) is facially unconstitutional. (Appellant's Br. at 11-15.) However, simply relying on the language in *Yang* and equating Mont. Code Ann. § 61-8-722(1) (2019)'s fine range

to the fine range in Mont. Code Ann. § 61-8-731(3) (2019)—the statute at issue in *Gibbons*—does not categorically render Mont. Code Ann. § 61-8-722(1) (2019) facially unconstitutional. And Curran does not set forth and apply the proportionality test traditionally employed for challenges under Montana's Excessive Fines Clause. This Court "will not conduct legal research on behalf of a party or develop legal analysis that might support a party's position." *State v. Oliver*, 2022 MT 104, ¶ 42, 408 Mont. 519, 510 P.3d 1218 (internal quotations and citation omitted).

Because Curran has not sufficiently alleged that the $600 fine imposed pursuant to Mont. Code Ann. § 61-8-722(1) (2019) is facially unconstitutional, this Court should decline to review his claim. However, even if this Court construes Curran's reliance on *Yang* and *Gibbons* as sufficiently raising a facial constitutional challenge, Curran has not, and cannot, establish that Mont. Code Ann. § 61-8-722(1) (2019)'s mandatory fine is disproportionate to the gravity of the offense.

B. Montana Code Annotated § 61-8-722(1) (2019) does not violate Montana's Excessive Fines Clause.

"Legislative enactments are presumed to be constitutional." *In re S.M.*, 2017 MT 244, ¶ 10, 389 Mont. 28, 403 P.3d 324 (citation omitted). "[C]ourts should avoid constitutional issues whenever possible." *State v. Russell*, 2008 MT 417, ¶ 19, 347 Mont. 301, 198 P.3d 217 (internal quotations and citation omitted).

"The party challenging the constitutionality of a statute has the burden of proving beyond a reasonable doubt that it is unconstitutional." *Yang*, ¶ 14 (citation omitted). To prevail on a facial challenge, the challenging party must show that "no set of circumstances exists under which the statute would be valid or that the statute lacks a plainly legitimate sweep." *Id.* (internal quotations and citations omitted).

The Eighth Amendment of the United States Constitution and article II, section 22, of the Montana Constitution protect a defendant's right to be free from excessive fines. Proportionality is the touchstone of the Eighth Amendment's and Montana's Excessive Fines Clauses. *Yang*, ¶ 16 (citation omitted). The fine amount "must bear some relationship to the gravity of the offense that it is designed to punish." *Id*.

Thus, in order to establish that Mont. Code Ann. § 61-8-722(1) (2019)'s fine is facially unconstitutional, Curran would have to establish, beyond a reasonable doubt, that there is no set of circumstances under which Mont. Code Ann. § 61-8-722(1) (2019)'s mandatory minimum $600 fine bears some relationship to a first offense DUI. Curran cannot do so.

The financial penalty ranges, up to felony DUI, all increase incrementally in proportion to the number of offenses. Unless there is a passenger under the age of 16 when the offense is committed, a first offense DUI is punishable within a fine

range of $600 to $1,200, a second offense DUI is punishable within a fine range of $1,200 to $2,000, and a third offense DUI is punishable within a fine range of $2,500 to $5,000. Mont. Code Ann. § 61-8-714(1)(a), (2)(a), (3)(a) (2019). Continuing up the ladder of increments of fines, a felony DUI follows suit with a fine range $5,000 to $10,000. Mont. Code Ann. § 61-8-731 (2019).

By setting the lowest mandatory financial penalty for DUI offenses at $600, and then attributing that lowest amount to the lowest number of DUI offenses—one—the Legislature ensured that the financial penalty was proportional to the gravity of the offense. Curran highlighting that a sentencing court cannot statutorily consider his ability to pay before imposition of a mandatory fine does not establish that a mandatory minimum $600 fine is disproportionate to a first time DUI offender. (*See* Appellant's Br. at 14.)

C. This Court should decline to extend *Gibbons* to Mont. Code Ann. § 61-8-722(1) (2019) because this Court's decision in *Gibbons* is manifestly wrong and, as such, should be overruled.

"Stare decisis means 'to abide by, or adhere to, decided cases.'" *State v. Gatts*, 279 Mont. 42, 51, 928 P.2d 114, 119 (1996) (quoting *Black's Law Dictionary* 1406 (6th ed. 1990)). It "is a fundamental doctrine which reflects [this Court's] concerns for stability, predictability and equal treatment." *Gatts*, 279 Mont. at 51, 928 P.3d at 119 (citation omitted). "When it comes to interpretation of our Constitution, we place a high value on getting it right, because

citizens must live with a bad decision unless we correct our mistake." *Gibbons*, ¶ 62. This Court is not constrained to follow precedent that was "badly reasoned or insufficiently reasoned." *Id*. Thus, stare decisis requires this Court to follow precedent unless the precedent is "manifestly wrong." *Formicove, Inc. v. Burlington N.*, 207 Mont. 189, 194-95, 673 P.2d 469, 472 (1983).

This Court should overrule *Gibbons* because it is manifestly wrong for four reasons: (1) Mont. Code Ann. § 46-18-231 is not an incorporation of Montana's Excessive Fines Clause; (2) the plain statutory language supports harmonizing Mont. Code Ann. § 46-18-231(3) with Mont. Code Ann. § 61-8-731(3) (2019); (3) Mont. Code Ann. § 61-8-731(3) (2019)'s fine range is constitutionally proportional to the gravity of the offense; and (4) proportionality to the offender is more appropriately considered as an as-applied, not a facial, challenge under Montana's Excessive Fines Clause.

1. Neither the plain language nor the legislative history supports that Mont. Code Ann. § 46-18-231 was meant to embody Montana's Excessive Fines Clause.

Since its decision in *Yang*, this Court has afforded Mont. Code Ann. § 46-18-231 considerable weight. In *Yang*, this Court addressed whether Mont. Code Ann. § 45-9-130(1)'s 35% drug market value fine was unconstitutional because it required district courts to impose the fine "without consideration of an offender's financial resources, the nature of the crime

committed, and the nature of the burden the required fine would have on the offender." *Yang*, ¶ 9. This Court began its inquiry into the constitutionality of Mont. Code Ann. § 45-9-130(1) by reviewing the constitutionality of Mont. Code Ann. § 46-18-231(3), a statute not referenced by Mont. Code Ann. § 45-9-130(1) or challenged by Yang on appeal. *Yang*, ¶ 41 (J. Rice, dissenting).

As aptly noted in the dissenting opinion, this Court ultimately concluded that Mont. Code Ann. § 46-18-231(3) "embodies the Eighth Amendment such that other statutes must conform to it to also be constitutional." *Yang*, ¶ 41 (J. Rice dissenting) (citing *Yang*, ¶¶ 17-19). Through that lens, this Court held that Mont. Const. art. II, § 22, "requires that the sentencing judge be able to 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 before ordering the offender to pay the 35%-market-value fine contained in § 45-9-130(1), MCA." *Id*. ¶ 24 (quoting Mont. Code Ann. § 46-18-231(3)).[4]

Relying on *Yang*, the *Gibbons* Court again, without any acknowledgment or analysis of the purpose for enacting Mont. Code Ann. § 46-18-231, elevated

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[4] In *State v. Tam Thanh Le*, 2018 MT 82, 387 Mont. 224, 392 P.3d 607, this Court reviewed the same constitutional challenge to the same statute it reviewed in *Yang*. Yet, in *Le*, this Court concluded, without mention of Mont. Code Ann. § 46-18-231, that Mont. Code Ann. § 45-9-130 did not violate Mont. Const. art. II, § 22, because that statute created a fine that was proportional to the gravity of the offense. *Le*, ¶¶ 13, 15. However, this Court did not overrule *Le* in *Yang*. *See Yang*, ¶ 24.

Mont. Code Ann. § 46-18-231 to the statutory equivalent of Montana's Excessive Fines Clause, concluding that "the Montana Legislature has effectuated [] federal and state constitutional protections against excessive fines by codifying the inquiry necessary to guarantee that a fine is proportional in § 46-18-231, MCA." *Gibbons*, ¶ 50. In support of its conclusion, this Court rationalized, without citation, that Mont. Code Ann. § 46-18-231:

> is an enlightened response to the increasing punitiveness in the American approach to criminal justice, an acknowledgment that imposition of mandatory fines on impoverished defendants are unlikely to reduce future crime, and a recognition that the impact of mandatory minimum fines is disproportionate on families of poor defendants and minority communities, particularly those of color.

Gibbons, ¶ 54. Only by promoting Mont. Code Ann. § 46-18-231 to constitutional status was the *Gibbons* Court able to conclude that Mont. Code Ann. § 61-8-731(3) (2019) was facially unconstitutional under Montana's Excessive Fines Clause because it did not comply with Mont. Code Ann. § 46-18-231.

However, nothing in the legislative history supports the *Gibbons* Court's conclusion that the Legislature intended and enacted Mont. Code Ann. § 46-18-231 to be a constitutional protection against excessive fines. Rather, Mont. Code Ann. § 46-18-231 was enacted to authorize sentencing courts to punish offenders with fines instead of incarceration for certain offenses as long as the offender has the ability to pay the fine and the fine does not exceed $50,000. Mont. S. Jud. Comm., Hr'g on S.B. 14 at 2-3 (Jan. 9, 1981); Mont. S. Jud. Comm., Hr'g on S.B. 14

(Jan. 13, 1981) at 4. Indeed, absent from the legislative history of Mont. Code Ann. § 46-18-231 is any mention of mandatory fines, that fines are unlikely to reduce future crimes, or that the fines are disproportionate on families of poor or minority defendants. *See* Mont. S. Jud. Comm., Hr'g on S.B. 14, 47th Leg. Sess. (Jan. 9, 1981) at 2-3; Mont. S. Jud. Comm., Hr'g on S.B. 14, 47th Leg. Sess. (Jan. 13, 1981) at 4; Mont. S. Jud. Comm., Hr'g on S.B. 14, 47th Leg. Sess. (March 6, 1981) at 4-5; Executive Session of Mont. H. Jud. Comm., S.B. 14, 47th Leg. Sess. (March 10, 1981).

Instead, the Legislature discussed the rising costs on counties for incarceration for offenses, such as white-collar crimes, where defendants with the ability to pay could be effectively punished by ordering a fine instead of incarceration. Mont. S. Jud. Comm., Hr'g on S.B. 14, 47th Leg. Sess. (March 6, 1981) at 4-5; Executive Sess. of Mont. H. Jud. Comm., S.B. 14, 47th Leg. Sess. (March 10, 1981). The only mention of a disparate impact on poor defendants was that poor defendants may have to be incarcerated instead of paying a fine because they would likely not be able to pay the fine. *See* Executive Session of Mont. H. Jud. Comm., S.B. 14, 47th Leg. Sess. (March 10, 1981).

Nor is it logical to assume that the 1981 Legislature, by enacting Mont. Code Ann. § 46-18-231(3)'s ability to pay provision, was establishing an "enlightened approach" to what proportionality for purposes of Montana's Excessive Fines

Clause included. This is especially true when viewed in the context of the evolution of the Eighth Amendment's Excessive Fines Clause, which Montana's Excessive Fines Clause mirrors. *See* U.S. Const. amend. VIII; Mont. Const. art. II, § 22. In 1998, *17 years after the Legislature enacted Mont. Code Ann. § 46-18-231*, the United States Supreme Court applied the Eighth Amendment's Excessive Fines Clause *for the first time* in *United States v. Bajakajian*, 524 U.S. 321, 327 (1998).

In *Bajakajian*, the United States Supreme Court "adopt[ed its] standard of gross disproportionality articulated in [its] Cruel and Unusual Punishments Clause precedents," and concluded that district courts determining proportionality "must compare the amount of the forfeiture to the gravity of the defendant's offense." *Bajakajian*, 524 U.S. at 336-37. If the district court concludes that the forfeiture amount "is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional." *Bajakajian*, 524 U.S. at 337. Although *Bajakajian* dealt with criminal forfeiture, the United States Supreme Court analyzed the criminal forfeiture at issue in *Bajakajian* by examining the purpose of prohibiting fines, implicitly setting the same test for excessive fines as for excessive forfeitures for purposes of the Eighth Amendment. *See Bajakajian*, 524 U.S. at 334-37. To date, the United States Supreme Court has not expanded proportionality to include

comparison of fines to an individual offender's ability to pay when a fine provision is facially challenged under the Eighth Amendment.

Simply put, this Court's conclusion that the Legislature enacted Mont. Code Ann. § 46-18-231 as the embodiment of Montana's Excessive Fines Clause is unsupported and contradicted by the legislation itself. First, when Mont. Code Ann. § 46-18-231(3) was enacted, the United States Supreme Court had not set a test for what constituted an unconstitutionally excessive fine. Second, the history and plain language of Mont. Code Ann. § 46-18-231 do not support that the Legislature was even considering Montana's Excessive Fines Clause when it enacted a statute that was meant to create alternative sentences for certain offenses. The *Gibbons* Court's presumption to the contrary renders *Gibbons* manifestly wrong because, just as in *Yang*, this Court improperly elevated a statute designed for a specific purpose to a constitutional mandate rather than adhering to the basic rules of statutory construction.

2. The *Gibbons* Court did not need to reach the constitutional question because principles of statutory construction support that Mont. Code Ann. § 61-8-731(3) (2019) should be harmonized with Mont. Code Ann. § 46-18-231(3).

The *Gibbons* Court disregarded this Court's standard practice of presuming legislative enactments to be constitutional and avoiding constitutional issues whenever possible, even though the *Gibbons* Court could have reached a similar

conclusion—that the ability to pay must be considered before imposing a fine pursuant to Mont. Code Ann. § 61-8-731(3) (2019)—by correctly employing principles of statutory construction. *See S.M.*, ¶ 10; *Russell*, ¶ 19.

Statutory construction requires the 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." *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 450 P.3d 898. "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.*

When several statutes apply to a situation, the statutes should be construed, if possible, in a manner that will give effect to each of them. *Fox*, ¶ 18. "[T]he rules of statutory construction require us to reconcile statutes if it is possible to do so in a manner consistent with legislative intent." *Ross v. City of Great Falls*, 1998 MT 276, ¶ 19, 291 Mont. 377, 967 P.3d 1103. "Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it." *Fox*, ¶ 18.

Because DUI offenses are not mentioned in Mont. Code Ann. § 46-18-231(1)(b), Mont. Code Ann. § 46-18-231(1)(a) would apply to DUI sentences. Montana Code Annotated § 46-18-231 provides, in relevant part:

> (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).
>
> . . . .
>
> (3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be able to pay the fine. 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 will impose.

Montana Code Annotated § 61-8-731(3) (2019) requires the district court to sentence the offender to the DOC for a term of 13 months to 5 years, *or* impose a fine of $5,000 to $10,000, *or* both. Mont. Code Ann. § 61-8-731(3) (2019). Montana Code Annotated § 46-18-231(1)(a) is, therefore, consistent with Mont. Code Ann. § 61-8-731(3) (2019),[5] which provides that the district court can incarcerate an offender, impose a fine, or both. Given the similar intents based on

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[5] Principles of statutory construction support that Mont. Code Ann. § 46-18-231 is only reconcilable with Mont. Code Ann. § 61-8-731(3) (2019) because that specific provision imposes a discretionary fine. Otherwise, principles of statutory construction support that mandatory fine provisions would control Mont. Code Ann. § 46-18-231. *See Plouffe*, ¶ 27. Because in effect this Court, in *Mingus*, correctly applied these principles of statutory construction to conclude that Mont. Code Ann. § 46-18-231 applies only to discretionary fines, not mandatory fines, the State maintains that *Mingus* was not manifestly wrong as this Court concluded in *Gibbons*. *Mingus*, ¶ 5; *Gibbons*, ¶¶ 62-64.

the plain language, Mont. Code Ann. § 61-8-731(3) (2019) should be read in conjunction with Mont Code Ann. § 46-18-231(1)(a) and (3). *See Ross*, ¶ 9.

Under this interpretation, the district court, when imposing a sentence pursuant to Mont. Code Ann. § 61-8-731(3) (2019), would have to conduct an ability to pay analysis before it imposed a fine. If the district court concluded that the offender has the ability to pay a fine, however, the district court would be confined to imposing a fine between $5,000 to $10,000 because this range is more specific than the $50,000 maximum fine available pursuant to Mont. Code Ann. § 46-18-231. *See State v. Plouffe*, 2014 MT 183, ¶ 27, 375 Mont. 429, 329 P.3d 1255 ("It is a well-established rule of statutory construction that specific provisions prevail over general provisions.").

When the relevant statutes are properly harmonized, the ability to pay is considered before a fine may be imposed pursuant to Mont. Code Ann. § 61-8-731(3) (2019). However, the *Gibbons* Court disregarded statutory construction in favor of giving the Legislature credence only as to Mont. Code Ann. § 46-18-231 based on its own incorrect assessment of the purpose of enacting the statute, at the expense of the Legislature's intent in enacting Mont. Code Ann. § 61-8-731(3) (2019). In doing so, the *Gibbons* Court showed its hand. Montana Code Annotated § 61-8-731(3) (2019) was not legally unconstitutional, but rather it was unconscionable to the *Gibbons* Court because it did not provide what the

Gibbons Court would have enacted if it had been the Legislature: an ability to pay analysis before imposing any fine.

In other words, the *Gibbons* Court's disregard of this Court's settled practice of not reaching constitutional questions and correctly employing principles of statutory construction resulted in the *Gibbons* Court creating "a bad decision" that impacts both the Legislature's ability to set proportional penalties and the safety of Montana citizens. *See Gibbons*, ¶ 62. Thus, the doctrine of stare decisis requires this Court to overrule *Gibbons*.

3. Montana Code Annotated § 61-8-731(3) (2019)'s fine is proportional to the gravity of the offense.

Gibbons is also manifestly wrong because the *Gibbons* Court failed to acknowledge that the Legislature has consistently enacted DUI penalties that increase exponentially in relation to the number of DUI convictions. In other words, the *Gibbons* Court, by choosing to focus only on Mont. Code Ann. § 46-18-231, overlooked that the Legislature has exemplified the concept of proportionality to the gravity of the offense by providing harsher penalties for repeat DUI offenders to address repeated dangerous behavior that impacts all Montanans.

The Eighth Amendment of the United States Constitution and article II, section 22, of the Montana Constitution protect a defendant's right to be free from excessive fines. Proportionality is the touchstone of the Eighth Amendment's and

Montana's Excessive Fines Clauses. *Yang*, ¶ 16. The fine amount "must bear some relationship to the gravity of the offense that it is designed to punish." *Id*. Fines have been part of the DUI sentencing scheme in Montana since 1955. Although the fines were discretionary, the Legislature, in 1955, set fine ranges for each level of DUI offense. Mont. Rev. Codes § 32-2132(5)(d). For instance, the first offense DUI was punishable by 6 months in jail, or a fine of $100 to $500, or both. *Id*. A second offense DUI was punishable by 10 days to 6 months in jail and, at the court's discretion, a fine of $300 to $500. *Id*. A third or subsequent conviction was punishable by 30 days to 1 year in jail and, at the court's discretion, a fine of $500 to $1,000. *Id*.

In 1979, the Legislature eliminated jail sentences for first and second offense DUIs, instead requiring those offenders to only pay a fine:

> Every person who is convicted of a violation of 61-8-401 shall be punished by a fine of not less than $100 or more than $500. On a second conviction, he shall be punished by a fine of not less than $300 or more than $500. On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year, which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000.

Mont. Code Ann. § 61-8-714(1) (1979).

Then, in 1981, *the same year that the Legislature enacted Mont. Code Ann. § 46-18-231*,[6] the Legislature maintained mandatory fines for first and second offense DUIs. Mont. Code Ann. § 61-8-714(1)-(2) (1981). At that time, "[t]he fine for shooting a deer out of season in Montana [was] higher than [DUI] on the first offense." Mont. S. Jud. Comm., Hr'g on H.B. 364, 47th Leg. Sess. (Jan. 30, 1981) at 3. The Legislature struggled with this disparity, especially because DUIs were "a serious problem in Montana," with 164 or "half of the people killed in accidents, involved a drunk driver," and "[t]wo-thirds of people stopped for [DUI were considered] problem drinkers." *Id*. at 2. As a result, the Legislature felt that "[t]he time ha[d] come for [them] to try to take some direct and forceful action to try to cut down on the number of fatalities." Highway and Transportation Comm., Hr'g on H.B. 364, 47th Legislative Sess. (March 10, 1981) at 4. The Legislature's goal with changing the sentences available was to attempt to find a "balance between punitive and rehabilitative." *Id*. at 1.

In 1989, the Legislature made the fine mandatory for a third or subsequent DUI conviction. Mont. Code Ann. § 61-8-714(3); Mont. S. Jud. Comm., Hr'g on H.B. 425, 51st Leg. Sess. (March 16, 1989) at 7. The purpose of House Bill 425 was to diminish the impact of drunk drivers in Montana. Mont. H. Jud. Comm.,

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[6] "[T]he Legislature is presumed to act with deliberation and with full knowledge of all existing laws on a subject." *Mont. Sports Shooting Ass'n v. State*, 2008 MT 190, ¶ 41, 344 Mont. 1, 185 P.3d 1003.

Hr'g on H.B. 425, 51st Leg. Sess. (Feb. 7, 1989) at 1. By 1989, it was reported that only 1 out of every 2,000 drunk drivers was being arrested and drunk driving was the leading cause of death for people ages 15 to 40. *Id*. Many drunk drivers drive "at least 100 times intoxicated before they are caught the first time." *Id*. at 5-6. By implementing harsher penalties, the Legislature hoped to deter that conduct, with the goal of stunting fatalities from drunk driving accidents. *Id*. at 1-2.

The Legislature's concerns in the 1980s remain true today: Montana consistently has a high percentage of fatal accidents caused by drunk driving. *See* NHTSA, *2021 Traffic Safety Facts: Alcohol-Impaired Driving*, at 9-10 (June 2023) (leading the nation in percentage of fatal accidents caused by drunk driving); NHTSA, *2022 Traffic Safety Facts: Alcohol-Impaired Driving*, at 9-10 (June 2024) (exceeding the national average in percentage of fatal accidents caused by drunk driving).

To combat the tragedies caused by drunk drivers in Montana, the Legislature has implemented a sentencing scheme that continues to impose mandatory fine ranges for every DUI offense level along with residential treatment and/or incarceration for felony DUI offenses. As this Court recognized in *Gibbons*, "only the Legislature [ ] has the authority to determine the offense and the penalty." *Gibbons*, ¶ 52. The Legislature clearly complied with that directive and, in doing so, it considered the proportionality between the gravity of each DUI offense and

provided a corresponding, proportional fine range to deter offenders from committing repeat DUIs. Moreover, the mandatory nature of the fines ensures equal treatment for all offenders statewide.

Indeed, the *Gibbons* Court even noted that "the clear purpose and intent of the [L]egislature under § 61-8-731, MCA, was to impose an enhanced financial penalty for felony DUIs." *Gibbons*, ¶ 56 n.3. The Legislature ensured proportionality with those enhanced penalties, especially for offenders sentenced pursuant to Mont. Code Ann. § 61-8-731(3) (2019), which has additional requirements that must be met.

Before the district court can impose a fine pursuant to Mont. Code Ann. § 61-8-731(3) (2019), the person must either (1) be convicted of violating Mont. Code Ann. §§ 61-8-401, -406, -411, or -465, and have a single conviction under Mont. Code Ann. § 45-5-106; or (2) have any combination of four or more convictions under Mont. Code Ann. §§ 45-5-104, -205, -628, 61-8-401, -406, or -465, with the offense under § 45-5-104 occurring while the person was operating a vehicle under the influence of alcohol, a dangerous drug, and/or any other drug, as provided in § 61-8-401(1). The person must also have been, "upon a prior conviction, placed in a residential alcohol treatment program under subsection (2)." Mont. Code Ann. § 61-8-731(3) (2019).

After a person satisfies the conviction and prior enrollment in residential treatment thresholds in Mont. Code Ann. § 61-8-731(3) (2019), the district court shall sentence the offender to the DOC for a term of 13 months to 5 years, *or* impose a fine of $5,000 to $10,000, *or* both. Mont. Code Ann. § 61-8-731(3) (2019). As Mont. Code Ann. § 61-8-731(3) (2019)'s plain language clearly states, the district court is not mandated to impose a fine. However, if the district court elects to impose a fine, the district court is required to impose a fine that is not less than $5,000, and not more than $10,000. Nevertheless, if the district court imposes a fine, the district court being required to impose a $5,000 mandatory minimum fine does not negate that Mont. Code Ann. § 61-8-731(3) (2019) incorporates the concept of proportionality.

4. Consideration of an offender's ability to pay a mandatory fine is more appropriately considered an as-applied, and not a facial, challenge to Montana's Excessive Fines Clause.

The *Gibbons* Court concluded that a fine is not excessive if it is both proportional to the gravity of the offense and to the offender. *Gibbons*, ¶ 56. In support of this conclusion, the *Gibbons* Court not only continued to rely on Mont. Code Ann. § 46-18-231(3), but also on the United States Supreme Court's recitation of the history of the Eighth Amendment's Excessive Fines Clause as existing to ensure that economic punishments are not only "proportioned to the wrong," but also that they "not be so large as to deprive [an offender] of his

livelihood." *Gibbons*, ¶ 48 (citing *Timbs v. Indiana*, 586 U.S. 146, 151 (2019)). However, the United States Supreme Court, in *Bajakajian*, when assessing a facial constitutional challenge to an economic punishment, only accounted for the proportionality of the economic punishment to the gravity of the offense, with no consideration for the livelihood of the offender. This rationale is consistent with the distinction between facial and as-applied constitutional challenges.

"A defendant's facial constitutional challenge is based on the defendant's allegation that the *statute* upon which the district court based her sentence is unconstitutional." *Yang*, ¶ 11 (emphasis in original). To prevail on a facial challenge, the challenging party must show that "no set of circumstances exists under which the statute would be valid or that the statute lacks a plainly legitimate sweep." *Yang*, ¶ 14 (internal quotations and citations omitted).

As this relates to mandatory fines generally, and specifically the challenged fine range under Mont. Code Ann. § 61-8-731(3) (2019), the challenging party would have to show that Mont. Code Ann. § 61-8-731(3) (2019)'s fine range under no set of circumstances is proportional to the gravity of the offense. As discussed more thoroughly above, the Legislature created DUI fines that are proportional to the gravity of the offense. As it relates specifically to Mont. Code Ann. § 61-8-731(3) (2019)'s fine range, it is proportional to receive a fine of $5,000 to $10,000 when the offender is sentenced, in relevant part, to at a minimum a second

felony DUI, and the offender has already received treatment during a previous DUI sentence and has demonstrated an inability to drive safely and sober. The Legislature, thus, considered the gravity of the offense when it set the mandatory fine.

A facial challenge cannot, and should not, consider proportionality to each offender. Instead, it should be appropriately considered as an as-applied challenge. "A defendant's as-applied constitutional challenge is based on the defendant's allegation that her *sentence* is unconstitutional, although imposed pursuant to a constitutional sentencing statute." *Yang*, ¶ 11 (emphasis in original).

Even if Mont. Code Ann. § 61-8-731(3) (2019) is not reconciled with Mont. Code Ann. § 46-18-231(3), as argued above, district courts remain free to consider ability to pay objections to mandatory fines through as-applied challenges under Montana's Excessive Fines Clause. In other words, if the offender argues that he has no ability to pay the fine, which would render the fine *excessive to him* because it would deprive *him* of *his* livelihood, the district court would be free to not impose the mandatory fine as it would be unconstitutional as to that offender, Mont. Code Ann. § 46-18-231(3) aside.

By failing to properly frame the issue raised in *Gibbons* as an as-applied challenge, the *Gibbons* Court effectively concluded that under no set of circumstances could Mont. Code Ann. § 61-8-731(3) (2019) be constitutional. The

Gibbons Court did so while also notably concluding that "[m]andatory minimum fines *can* produce punishment that is disproportionate and unjust when the offender's ability to pay is not considered." *Gibbons*, ¶ 54 (emphasis added). In other words, the *Gibbons* Court, by using the word can, recognized that circumstances exist under which a fine imposed pursuant to Mont. Code Ann. § 61-8-731(3) (2019) is constitutionally proportional. The *Gibbons* Court's conclusion that Mont. Code Ann. § 61-8-731(3) (2019) is *facially* unconstitutional, while focusing on the *offender's* individual livelihood, impermissibly conflated the two available constitutional challenges, rendering *Gibbons* manifestly wrong.

The holding in *Gibbons* was manifestly wrong because it failed to recognize that constitutionally required proportionality was infused into Mont. Code Ann. § 61-8-731(3) (2019) when the Legislature set the penalty. This failure, along with improperly equating statutory language from Mont. Code Ann. § 46-18-231 as part of Montana's Excessive Fines Clause, failing to harmonize the two statutes at issue, and improperly framing the challenge as a facial challenge when a proportionality to the offender challenge is more appropriately considered as an as-applied challenge, all establish that this Court should overrule *Gibbons*.

II. Even if Gibbons applies, the district court did not abuse its discretion when it imposed a $600 suspended fine as part of Curran's sentence.

A. The municipal court considered Curran's ability to pay before it imposed the $600 suspended fine.

To the extent that *Gibbons*'s holding is that Mont. Code Ann. § 61-8-731(3) (2019)'s mandatory minimum fine is unconstitutional because it did not authorize the district court to conduct an ability to pay analysis, the district court, here, complied with *Gibbons* because it did conduct an ability to pay analysis. Before imposing the fine, the municipal court, which had previously heard about Curran's ability to pay at his first sentencing hearing, asked Curran about his current ability to pay at his September 13, 2023 sentencing hearing. At that time, Curran reported that his financial circumstances at the time of his first sentencing hearing in August 2020 remained unchanged. Curran's only source of income was social security and, after paying for living expenses, Curran only had, at best, $100 left each month to pay for food. Curran also informed the municipal court that he used a walker and required supplemental oxygen. Based on that information, the municipal court imposed, and then suspended, the $600 fine to prevent financial hardship to Curran over the course of his sentence.

The municipal court appropriately considered Curran's financial circumstances when it elected to suspend the entire $600 fine because, as this Court noted in *Curran*, ¶ 21, the municipal court statutorily did not have the authority to

not impose the $600 fine. Montana Code Annotated § 46-18-231(2) provides that "[w]henever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge may impose a fine only in accordance with subsection (3)." Based on the plain language, Mont. Code Ann. § 46-18-231(2) only applies to fines that the sentencing court, in its discretion, could impose, and not to fines that the sentencing court is required to impose. Because Mont. Code Ann. § 61-8-722(1) (2019) mandates the sentencing court impose a $600 minimum fine, Mont. Code Ann. § 61-8-722(1) (2019), as the more specific statute, controls Mont. Code Ann. § 46-18-231(2), which is a general statute. *See Plouffe*, ¶ 27.

However, the municipal court correctly used the evidence of Curran's ability to pay to support suspending the entire $600 fine, which it had the authority to do. Sentencing courts have the authority to suspend fines. *Curran*, ¶ 25 (relying on Mont. Code Ann. § 46-18-201(2)(a), (3)(b)). This includes mandatory fines. *Curran*, ¶ 28. The municipal court correctly used its discretion when it suspended Curran's entire $600 fine after considering his ability to pay.

B. The record supports that imposition of the $600 suspended fine was proportional to Curran's specific DUI offense and his individual circumstances.

As argued above, in order to consider whether a fine is constitutionally proportional under the Excessive Fines Clause to an offender's own characteristics

and circumstances, the challenge must be raised as an as-applied constitutional challenge. Construing Curran's challenges to the municipal court as an as-applied constitutional challenge, Curran cannot establish that the fine was disproportionate to the circumstances of his DUI offense and his individual circumstances.

At the time he committed the instant offense, law enforcement witnessed Curran driving completely on the right shoulder of Spokane Avenue after Curran had admittedly consumed four beers. (Doc. 0.01.) Curran had also urinated and soiled himself. (*Id.*) Curran admitted to law enforcement that he had been heavily drinking alcohol for the past two weeks. (*Id.*)

Although Curran has a college degree and has held numerous jobs throughout his life, his current medical needs limit his ability to work. Curran has chronic obstructive pulmonary disease and a spinal compression fracture. Curran uses a walker and relies on supplemental oxygen. After losing his job due to being hospitalized in 2020, Curran has been primarily surviving off social security, which covers his living expenses with no additional money left at the end of each month.

Based on the current condition of his health and his financial situation, the municipal court imposed, but suspended, the entire mandatory minimum $600 fine. In doing so, the municipal court appropriately imposed the $600 fine as a means to deter Curran's future conduct and to protect his safety and the safety of the public. The municipal court also appropriately, as this Court asked it to do on remand,

considered alternative means to satisfy Curran's fine when it suspended the $600 fine based on Curran's financial situation. The suspended $600 fine was not disproportionate to Curran, the offender. As such, Curran cannot establish that the municipal court abused its discretion when it imposed the $600 suspended fine or that the fine was constitutionally excessive as applied to him.

Nor did the municipal court abuse its discretion when it imposed the suspended $600 fine and reiterated that Curran had to complete the conditions of his sentence, including the Prime for Life course, that had been ordered as part of his original sentence. Curran seemingly argues on appeal that the suspension of his fine still renders the fine illegal, in part because it is conditioned on completion of the Prime for Life course, which Curran posits has the "*potential* to become a payment obligation." (Appellant's Br. at 15 (emphasis added). To the extent Curran's assertion is construed as a challenge to the municipal court imposing the Prime for Life condition as part of Curran's sentence, Curran has waived appellate review of this unpreserved claim.

The municipal court, on remand, did not reimpose the Prime for Life condition as part of Curran's sentence. Curran did not challenge the imposition of the Prime for Life course condition in his direct appeal to this Court of his original sentence. As such, this Court's instructions on remand did not impact any other portion of Curran's sentence except for the $600 fine.

Nor, at his sentencing hearing on remand, did Curran object when the municipal court *reminded* Curran that he had to continue to comply with the conditions of his original sentence, which included the Prime for Life course. Instead, Curran simply asked where the Prime for Life courses occurred and inquired if he could complete them online. Indeed, Curran did not raise any concerns regarding the Prime for Life course until his direct appeal to the district court. Consequently, because the Prime for Life course is a legal condition required by Mont. Code Ann. § 61-8-732(1)(b) (2019), and Curran did not object to the imposition of the condition to the municipal court, Curran has waived appellate review of this claim.

CONCLUSION

This Court should affirm Curran's conviction and sentence.

Respectfully submitted this 6th day of May, 2025.

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<u>CERTIFICATE OF COMPLIANCE</u>

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 9,969 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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CERTIFICATE OF SERVICE

I, Cori Danielle Losing, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 05-06-2025:

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