IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0366

STATE OF MONTANA,

Plaintiff and Appellee,

v.

NINA ANGELINA AUGUSTA HUFF,

Defendant and Appellant.

REPLY BRIEF OF APPELLANT

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, the Honorable John Kutzman, Presiding

APPEARANCES:

TAMMY A. HINDERMAN
Division Administrator
CHARLOTTE LAWSON
Assistant Appellate Defender
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147
c.lawson@mt.gov
(406) 444-9505

ATTORNEYS FOR DEFENDANT
AND APPELLANT

AUSTIN KNUDSEN
Montana Attorney General
TAMMY K PLUBELL
Bureau Chief
Appellate Services Bureau
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

JOSHUA A. RACKI
Cascade County Attorney
AMANDA LOFINK
Deputy County Attorney
121 4th Street North, Suite 2A
Great Falls, MT 59401

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION

Ms. Huff's appeal is, at its core, a typical breach-of-contract case: Party A is accused of breach; Party B relies on that alleged breach to avoid its reciprocal contractual obligations, to Party A's detriment; and a court is asked to decide who actually breached the contract.

The State does not dispute that it could avoid its contractual obligations only if Ms. Huff materially breached the plea agreement. Nor does the State dispute that, if the district court wrongly concluded that Ms. Huff committed a material breach, the State's admittedly harsher sentencing recommendation would entitle Ms. Huff to reversal and her choice of remedy for the State's breach. The dispute at the heart of this appeal is whether the district court's material breach conclusion was correct.

The State spends much of its response brief discussing irrelevant facts and accusations. This appeal's resolution does not turn on whether the State or even this Court approves the conduct Ms. Huff admitted in the course of pleading guilty, believes she deserves the sentence ultimately received, or would host her as a houseguest. It turns on whether and when, consistent with contract law and a

defendant's fundamental right to due process, the State can renege on the promises it makes in a plea agreement.

This Court should enforce well-established contract law, and in so doing, reverse the district court's erroneous conclusion that Ms. Huff materially breached the plea agreement and remand for further proceedings so that she may select and pursue her preferred remedy for the State's breach.

ARGUMENT

I. The State does not directly respond to Ms. Huff's arguments that she did not breach the plea agreement.

Throughout its brief, the State refers to Ms. Huff's temporary loss of shelter and inability to communicate with the PSI author as "failure to cooperate[.]" (*E.g.*, Appellee's Br. 18.) By doing so, the State skips over the threshold question posed in Ms. Huff's opening brief: Did she breach the plea agreement at all? (Appellant's Br. 13–17.) More specifically, can the plea agreement be construed to require immediate availability to the PSI author, as opposed to cooperation within a reasonable time as prescribed by law when no date certain is specified for performance? (Appellant's Br. 14–16.)

Instead, the State beckons this Court's attention to hearsay-within-hearsay accusations of theft made by Ms. Huff's former friend, which the State misleadingly calls robbery (Appellee's Br. 14, 19). *Contra* Mont. Code Ann. § 45-5-401(1) (defining robbery to require proof of inflicting, threatening, or putting another person in fear of bodily injury or committing or threatening to commit another felony in the course of a theft). The State's argument might have been relevant *if* the district court had based its breach finding on the reason why she lost contact with the probation officer, or if the court found that she violated a different typical plea agreement provision prohibiting committing additional crimes, *e.g.*, *State v. Claus*, 2023 MT 203, ¶¶ 4, 20, 413 Mont. 520, 538 P.3d 14. But it did not do so. (Sent. Tr. at 139 ("If you don't have a phone, if you are staying with somebody, and . . . you leave or you get kicked out or whatever happened, her legs still worked . . . .").) And although the district court's breach finding was legally and factually flawed in some respects, its decision not to rely on the former friend's accusation was correct under the circumstances.

The only evidence of the so-called "robbery" before the district court was hearsay within hearsay: a statement by the PSI author,

which quoted accusations made by the former friend. (Doc. 37 at 8.) Relying on this evidence to find breach without any opportunity for Ms. Huff to cross-examine *either* declarant, neither of whom testified at the sentencing hearing (*see generally* Sent. Tr.), would have violated Ms. Huff's right to due process. *See Claus*, ¶¶ 4, 18–21 (emphasizing that defendant "was allowed to cross-examine the officers and present his . . . defenses" to alleged new crimes before district court found violation of plea agreement).

Instead, the district court disclaimed any reliance on the circumstances underlying Ms. Huff's loss of contact with the PSI author, concluding that, "*whatever happened*, her legs still worked, she was supposed to get down to the [probation] office and let them know where she was." (Sent. Tr. at 139 (emphasis added).) The problems with that conclusion—which the State does not directly address—are that the court failed to consider whether Ms. Huff fulfilled her obligation within a reasonable time consistent with § 28-3-601, MCA, and the court's factual findings were unsupported by the record and misapprehended the effect of the evidence. (Appellant's Br. 13–17.)

The State mischaracterizes Ms. Huff's reliance on Montana Code Annotated § 28-3-601 as "diminish[ing] her breach" and contends that allowing a reasonable time for compliance "in these circumstances would render Huff's promise to cooperate meaningless." (Appellee's Br. 17–18.) Where, as here, the parties do not contract to perform their respective promises within a time certain, Section 28-3-601, MCA, establishes a sensible and flexible default by which courts can evaluate an alleged breach: performance within a reasonable time. The State does not dispute that Ms. Huff complied with the PSI process after she was arrested—*i.e.*, when she regained shelter and the ability to communicate with the probation officer, approximately two weeks after losing contact. (Appellee's Br. 19 (acknowledging "compliance after her arrest").) A promise ultimately fulfilled is not "meaningless." To the extent the State disagrees with that proposition, it can insist upon completion of the PSI process within a time certain in future plea agreements to avoid application of Section 28-3-601, MCA.

II. The State failed to establish that any breach by Ms. Huff was material.

The State does not disagree that only a material breach of a contract can entitle the non-breaching party to escape its reciprocal

obligations. *Davidson v. Barstad*, 2019 MT 48, ¶ 22, 395 Mont. 1, 435 P.3d 640. The non-breaching party bears the burden of showing that the breach was material, *i.e.*, that the non-breaching party did not substantially receive the expected benefit of the contract. *Davidson*, ¶ 23. The State did not do so here. (Appellant's Br. 18–20.)

The State contends that a delay in the PSI process must constitute a material breach or else the "promise to cooperate" would be "meaningless." (Appellee's Br. 17–18.) But this assertion redefines cooperation to mean immediate availability at the PSI author's convenience rather than what it actually means: providing substantive information to assist the PSI author in compiling the PSI. *See State v. Ariegwe*, 2007 MT 204, ¶¶ 176–77, 338 Mont. 442, 167 P.3d 815 (rejecting State argument that defendant refused to cooperate in PSI process when defendant declined PSI author's first interview attempt pending consultation with defense counsel); *State v. Peart*, 2012 MT 274, ¶¶ 9–13, 367 Mont. 153, 290 P.3d 706 (summarizing defendant's refusal to provide substantive information to PSI author); *State v. Rogers*, 2007 MT 227, ¶ 41, 339 Mont. 132, 168 P.3d 669 ("Rogers' lack of cooperation was not limited to only those instances in which he could

have incriminated himself. Rather, Lemons noted that Rogers was extremely closed and defensive in providing a social and sexual history . . . .").

Refusing to provide information to the PSI author deprives the author, evaluators, and the sentencing court itself of information important—but not essential—to the sentencing process. *See Peart*, ¶¶ 9–13, 32–33. By contrast, a two-week delay in being able to provide that information is undoubtedly inconvenient, but the State ultimately received the benefit of its bargain: guilty pleas and a completed PSI *with* Ms. Huff's substantive input. (Appellant's Br. 18–20.) The State's assertion that Ms. Huff's "compliance after her arrest" could not satisfy her obligation to cooperate rests on its redefinition of what her obligation to cooperate meant. (*See* Appellee's Br. 18–19.)

The State asserts that Ms. Huff "ignores" that the State petitioned to revoke her bond and that her sentencing hearing was delayed. (Appellee's Br. 18.) To the contrary, Ms. Huff's opening brief expressly acknowledged her arrest as the State's *remedy* to the extent the delay was a non-material breach: Because the court conditioned Ms. Huff's continued release on doing "whatever they tell you they need you to do

in connection with this PSI" (COP Tr. at 17), the State effectively was able to "enforce[] the [plea] agreement in equity by obtaining specific performance . . . when it successfully petitioned for revocation of her bond until she completed the PSI interview." (Appellant's Br. 21.) And the State fails to acknowledge that several factors contributing to the sentencing hearing's delay were beyond Ms. Huff's control: A roughly two-week period between the State's petition to revoke and issuance of the arrest warrant (*see* Appellee's Br. 20), a one-week delay between Ms. Huff's arrest and the PSI interview (D.C. Docs. 30 at 5, 37 at 8), and the State's request for both continuances of the hearing (D.C. Docs. 32, 38). More importantly, a short delay of a hearing, in and of itself, does not establish material breach in this case. The State did not demonstrate before the trial court or this Court that the delays it requested deprived it of its expected benefit from Ms. Huff's contractual promise to cooperate in the PSI process, or even from the plea agreement more broadly.

There is no limiting principle on the State's argument that a defendant's temporary unavailability to the PSI author constitutes a material breach of an obligation to cooperate in the PSI process. It is

not difficult to imagine circumstances in which a defendant might be unavailable on the PSI author's preferred timeline through no fault of her own: a family emergency, a phone service outage, or an acute episode of physical or mental illness. *See also Ariegwe*, ¶¶ 176–77 (inability to consult with attorney before PSI interview). If any delay in the process suffices to establish material breach of a promise to cooperate, then any plea bargain could be unraveled by a single missed call.

A defendant's constitutional right to due process in the plea-bargaining process sets the standards of contract law as a floor, not a ceiling. *See State v. Warner*, 2015 MT 230, ¶ 14, 380 Mont. 273, 354 P.3d 620. It makes no sense to set a *lower* standard of proof for material breach when a human being's liberty is at stake than the standard that applies in ordinary contract disputes concerning money or property. *See Davidson*, ¶ 23 (articulating material breach standard). Relieving the State of its obligations under a plea agreement upon a simple showing that a defendant is a but-for cause of a delayed hearing is antithetical to that defendant's right to due process, especially in light of the numerous fundamental rights defendants

waive when agreeing to plead guilty. (*See* Appellant's Br. 28–29.) Moreover, setting such a low threshold to prove material breach in the context of plea agreements would corrode the foundation of trust and good faith between defendants and prosecutors necessary for plea bargaining—and, by extension, the criminal justice system in its current form—to exist. *Puckett v. United States*, 556 U.S. 129, 141 (2009).

The State failed to meet its burden to show Ms. Huff materially breached the plea agreement. (Appellant's Br. 18–20.) Accordingly, the State was not entitled to avoid its obligation to recommend the sentence promised in the plea agreement, and the district court erred when it concluded otherwise. (Appellant's Br. 20–22.)

It is not Ms. Huff's obligation to show by clear and convincing evidence that the State's departure from its recommended sentence resulted in a miscarriage of justice. (*Contra* Appellee's Br. 20–22.) That is the standard for analyzing whether the non-breaching party has chosen a remedy that, although lawful, is unjust. *Warner*, ¶¶ 14, 20. Ms. Huff's contention is not that the State selected a lawful but unjust remedy; it is that the remedy of rescission is not lawfully available to

the State because she did not materially breach the contract. (Appellant's Br. 18–22.) Accordingly, as explained in Ms. Huff's opening brief, the State breached the plea agreement when it deviated upward from its promised sentencing recommendation. (Appellant's Br. 22–23.) This Court should reverse and remand to permit Ms. Huff to select her chosen remedy for the State's breach. (Appellant's Br. 23–24.)

CONCLUSION

The State did not meet its burden to show that Ms. Huff materially breached her obligation to cooperate in the PSI process because, after a short delay, the State received the benefit of its bargain: a completed PSI including information provided by Ms. Huff. Accordingly, the State was not entitled to avoid its obligations under the plea agreement, and the State breached the agreement when it recommended harsher sentences. This Court should reverse the judgment of the district court and remand for further proceedings to allow Ms. Huff to determine and pursue her preferred remedy for the State's breach.

Respectfully submitted this 9th day of May, 2025.

OFFICE OF STATE PUBLIC DEFENDER
APPELLATE DEFENDER DIVISION
P.O. Box 200147
Helena, MT 59620-0147

By: /s/ Charlotte Lawson
CHARLOTTE LAWSON
Assistant Appellate Defender

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2,205, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Charlotte Lawson
Charlotte Lawson

CERTIFICATE OF SERVICE

I, Charlotte Lawson, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 05-09-2025:

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Representing: State of Montana
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Service Method: eService
E-mail Address: dojsupremecourtefilings@mt.gov

Electronically signed by Kat J. Hahm on behalf of Charlotte Lawson
Dated: 05-09-2025