**IN THE SUPREME COURT OF THE STATE OF MONTANA**

No. DA 24-0027

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MONTE RAY WALTON, SR.,

Defendant and Appellant.

# BRIEF OF APPELLEE

On Appeal from the Montana Seventh Judicial District Court,
Dawson County, The Honorable Olivia Rieger, Presiding

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## STATEMENT OF THE ISSUE

Whether this Court should conduct plain error review of Appellant's claim that the prosecutor breached the plea agreement by requesting a 15-year parole restriction, upon which the plea agreement was silent, and by recommending chemical treatment as allowed by statute, upon which the plea agreement was also silent and which the district court did not impose.

## STATEMENT OF THE CASE

On August 1, 2022, the State charged Appellant Monte Walton Sr. (Walton) with one count of attempted sexual abuse of children involving A.S., who was under the age of 12 at the time of the offense; one count of sexual abuse of children based on Walton's possession of photographs on his cell phone depicting children, who appear to be under the age of 12, engaging in sexual acts; one count of incest involving Walton's stepson, who was less than 12 years old at the time of the offense; one count of incest involving Walton's daughter, who was less than 16 years old while Walton was more than 3 years older than her; one count of endangering the welfare of children for having exposed his minor-aged son and daughter to methamphetamine; one count of attempted sexual abuse of children for encouraging his daughter, who was less than 16 years old, to engage in sexual conduct with another adult male; one count of attempted sexual abuse of children

for encouraging his daughter, who was less than 16 years old, to send him a photograph of her in a state of undress to arouse or gratify his own sexual desire; and one count of endangering the welfare of children for encouraging his daughter, who was 15 years old, to use methamphetamine. (D.C. Doc. 4.)

On April 14, 2023, Walton filed a motion to vacate his jury trial and to schedule a change-of-plea hearing. (D.C. Doc. 26.) On May 1, 2023, the parties filed an executed plea agreement and acknowledgment of rights. (D.C. Doc. 30, attached as App. A.) The plea agreement set forth the eight offenses the State alleged Walton had committed, including the maximum penalty for each of those offenses. (*Id.* at 1-3.) Walton agreed to plead guilty to every charge. Under the agreement, the State agreed that for Count I, attempted sexual abuse of children with a victim under 12 years old, it would recommend 30 years in prison; for Count II, sexual abuse of children with a victim under 12 years old, the State would recommend 60 years in prison; for Count III, incest with a victim less than 12 years old, the State would recommend 100 years in prison; for Count IV, incest with a victim less than 16 years old, the State would recommend 100 years in prison; for Count V, endangering the welfare of children, the State would recommend 5 years in prison; for Count VI, attempted sexual abuse of children with the victim less than 16 years old, the State would recommend 30 years in prison; for Count VII, attempted sexual abuse of children with the victim less than

16 years old, the State would recommend 20 years in prison; and for Count VIII, endangering the welfare of children, the State would recommend 5 years in prison. (*Id*. at 5-6.) The State agreed to recommend that the sentences all run concurrently. (*Id*. at 6.)

Under the plea agreement, if the court suspended any portion of Walton's sentence, the State would recommend that Walton be "under the supervision of the Montana Department of Corrections, Probation & Parole Office, subject to administrative and statutory rules and conditions," and any "other conditions recommended by the Probation and Parole Officer contained within the Pre-Sentence Investigation Report." (*Id*. at 7.)

The plea agreement provided that Walton could argue "for any legal sentence." (*Id*. at 6.) Walton acknowledged the rights he would be waiving upon entering guilty pleas. (*Id*. at 7-9.) Walton acknowledged in the plea agreement that he understood the district court was not bound by the agreement and could impose the maximum sentence the law allows and, if the court deviated from the plea agreement, he would not be allowed to withdraw his guilty pleas. (*Id*. at 9.)

The district court held a plea change hearing on May 1, 2023. (5/1/23 Transcript of Plea Change Hearing [Plea Change Tr.].) The district court accepted Walton's guilty pleas, ordered a presentence investigation (PSI), and scheduled a sentencing hearing for June 12, 2023. (D.C. Doc. 31.) Prior to the sentencing

hearing, the PSI and a psychosexual evaluation were filed under seal with the court. (D.C. Docs. 34-35.)

Walton filed a sentencing memorandum. (D.C. Doc. 46.) He concurred with the State's agreed-upon sentencing recommendations for Counts I and IV-VIII, but proposed a sentence of 40 years for Counts II and III, all to run concurrently. (*Id*. at 10-11.) The only conditions recommended in the PSI that Walton opposed were financial. (*Id*. at 7-8.)

On August 29, 2023, the district court held a sentencing hearing. (D.C. Doc. 49, attached as Appellant's App. A.) After considering the psychosexual evaluation, the PSI, witness testimony, the parties' sentencing recommendations, and Walton's statement, the district court pronounced Walton's sentence. For Count I, attempted sexual abuse of children, with the victim under 12 years old, the court sentenced Walton to 30 years in prison, ineligible for parole; for Count II, sexual abuse of children, with the victim under 12 years old, the court sentenced Walton to 60 years in prison, ineligible for parole for 40 years; for Count III, incest, with the victim under 16 years old, the court sentenced Walton to 75 years in prison, ineligible for parole for 40 years; for Count IV, incest with the victim under 16 years old, the court sentenced Walton to prison for 75 years, ineligible for parole for 40 years; for Count V, endangering the welfare of children, the court sentenced Walton to prison for 5 years, ineligible for parole; for Count VI,

attempted sexual abuse of children, with the victim under 16 years old, the court sentenced Walton to prison for 30 years, ineligible for parole; for Count VII, attempted sexual abuse of children, with the victim under 16 years old, the court sentenced Walton to prison for 30 years, ineligible for parole; for Count VIII, endangering the welfare of children, the court sentenced Walton to prison for 5 years, ineligible for parole. The court ordered that the sentences would run concurrently. (Appellant's App. A at 3-10.)

The district court made numerous recommendations for conditions if Walton was ever paroled. (*Id*. at 11-17.) The district court designated Walton as a Tier III sexual offender. (*Id*. at 4.)

In the written judgment, the district court provided the reasons for the sentence it imposed:

> The Court, in imposing sentence in this matter, considered the admissions of the Defendant that he had possessed over 100 internet tab browsers depicting prepubescent children engaged in sexual behavior on his own cellular device, the testimony during the co-Defendant Amanda Walton's case that this Defendant began possessing and accessing child pornography beginning in as early as 2007; that on the night of the Defendant's arrest he was admittedly aroused by images of child pornography including cunnilingus between a child and an adult female and "father-daughter" and "mother-son" images incestual in nature; that the Defendant had been "sexting" using Facebook's Messenger Kids communication application with a 10-year-old girl who was friends with his youngest daughter; that on the night of the arrest of the Defendant, the Defendant had engaged in a sex party with the 10-year-old girl's mother; the nature of the communication between the Defendant and

the 10-year-old girl and the effect that the Defendant's actions has had upon this child.

The Defendant has a poor adjustment to supervision following his criminal convictions, having engaged in family-based violence previously as reflected by his criminal history and the Psychosexual Evaluation showing previous crimes of domestic violence/assault, endangering the welfare of children as well as substance-based crimes such as drug distribution, driving under the influence. The Defendant has performed poorly on prior supervision which resulted in revocation of his previous sentences.

The Defendant has been diagnosed as having a pedophilic disorder, non-exclusive type indicating that the Defendant is attracted to both young boys and young girls; other specified personality disorder; generalized anxiety disorder; persistent depressive disorder and amphetamine-type substance use disorder (methamphetamine) in early remission in a controlled environment. The Court has considered that despite previous interventions and treatment for the Defendant's methamphetamine use disorder, the Defendant continued to use methamphetamine during the time he was committing sexual violence on his stepson and his daughter. The Court considered the impact of these offenses on the victims of the offenses. The mother of A.S. stated that A.S. has changed following the Defendant's actions, that A.S. is in counseling and takes medication as a 10-year-old girl. A.S. believes that the Defendant ruined her life, and he should never get out of jail. That R.H., in Count III is in counseling for the trauma he has experienced as a result of the Defendant's actions, and he takes medication as a result; that this individual believes that the Defendant should essentially rot in jail and blames the Defendant for ruining the family. The Court considers the statements of E.W., in Count IV, Count VI, Count VII and Count VIII. E.W. related that her father's actions have devastated her mental health, she has lost her innocence, her home, her family and her ability to live with her siblings; E.W. has experienced a change in her thoughts, her experiences, her place in her community and in her school. E.W. engages in counseling, is trying to catch up in school and is attempting to make progress in her life.

> The Court considered that the Defendant was characterized as egosyntonic, in that he is not terribly uncomfortable with the presence of sexual deviance in his life but instead is uncomfortable with the consequences of acting upon his sexual deviance (getting caught).
>
> . . . .
>
> The Court also considered the recommendation from Mr. Sullivan, as well as the record in this matter, that the Defendant be deemed a high-risk Tier III sexual offender; the recommendation by Mr. Sullivan that the least restrictive environment for effective treatment of the Defendant for his sexual deviance is the Montana State Prison and the recommendation that the Defendant be required to enter into, and complete, the sexual offender programming through the Intensive Treatment Phase prior to parole.
>
> The Defendant's sentence is found by this Court to be commensurate with the harm caused to each of his victims. In an effort to protect the safety of the public from the Defendant, who is a high risk sexual offender with attraction to both prepubescent males and females, who has distorted thinking that reflects a lack of awareness related to consent and his sexual contact with children, in no other way can this Court promote a sense of public safety to protect both the victims of the Defendant's actions and prevent future victims of his sexual deviance. During this case, based upon the testimony presented, the Defendant did not appear shameful of his sexual deviance and that is the scariest type of sexual offender, the one who wants to be different but does nothing to change.

(*Id.* at 18-20.)

The district court imposed an additional 15-year parole restriction because the court found it necessary to protect the public based upon Walton's "distorted thinking specifically as related to sexual contact with children, impacts on the victims of his offenses, and his overall danger to society and future victims[, which] makes the extended parole restriction appropriate." (*Id*. at 20.) The court

additionally observed that Walton's statements that he viewed his sexual abuse of his own children as an "act of love" and his characterization of himself as a pedophile, combined with his lack of insight, justified the additional parole restriction to protect society from "such a sexual predator." (*Id*.)

## STATEMENT OF THE FACTS

### I. The offenses[1]

On June 24, 2022, an adult female named Jessica asked to speak to an officer about text messages her 10-year-old daughter had received from Walton, who was a family friend. Jessica learned about the messages from Walton's wife, Amanda, and later asked her daughter, A.S., to see her phone. After reading the messages, Jessica decided she needed to report the matter to law enforcement. Officer Ewalt of the Glendive Police Department (GPD) spoke with A.S. and Jessica. A.S. explained that Walton had told her to delete the messages between the two of them. A.S. had intended to do so and not say anything about the messages because she did not want to cause Walton's family any harm. By looking at A.S.'s phone, Officer Ewalt could see that Walton had called A.S.'s cell phone. A.S.

[1] Since Walton pled guilty, the State is relying upon the facts alleged in the State's Motion for Leave to File an Information and Affidavit in Support (D.C. Doc. 1) to summarize the underlying facts supporting the crimes to which Walton entered guilty pleas.

reported that during the phone call Walton asked, "Can we fuck?" (D.C. Doc. 1 at 3.)

Jessica consented to leaving A.S.'s cell phone with Officer Ewalt and she consented to the officers searching A.S.'s cell phone. After Office Hooper completed the search of A.S.'s cell phone, she applied for and received a warrant to search Walton's residence and to seize any communication devices that belonged to Walton. (*Id*. at 5.) When officers served and executed the search warrant on the morning of June 26, 2022, Walton answered the door in his underwear. In the course of the search, officers found Walton's wife in bed with Jessica, and found another adult male, Jason Geiger (Geiger), in the laundry room just behind Walton's and his wife's bedroom. Walton agreed to speak with one of the officers, denied that they would find anything involving sexual abuse of children on his phone, and claimed that the only children he would have contacted using his cell phone were his children who lived in the family home. Officers were unable to locate Walton's cell phone until a later date. (*Id*. at 5-6.)

After receiving a search warrant for Walton's cell phone, Officer Hooper found a hidden folder in the phone gallery with 94 sexually graphic images of prepubescent nude children performing a wide range of sexual acts on adults and adults performing sexual acts on children. Some of the photographs depicted the sexual organs of children. On the Safari application of Walton's phone, there were

194 open tabs. Of those open tabs, 103 were sexual in nature. Of those 103 open tabs, 102 depicted children on websites engaging in sexual acts with both adult males and adult females. (*Id*. at 6.)

In reviewing text messages from Walton's phone, Officer Hopper established that throughout the night on June 25, 2022, and the early morning hours of June 26, 2022, Walton had been texting his wife, Jessica, and his 15-year-old daughter. Walton had been in the upstairs bathroom using methamphetamine, while Amanda, Jessica, and Geiger were downstairs using dangerous drugs. In Walton's texts to his daughter, he asked her to come to the bathroom to use methamphetamine with him. Some of the other texts to his daughter were sexual in nature. (*Id*. at 11-13.)

Dianna Hammond conducted a forensic interview of Walton's stepson, who was 19. He reported that Walton and his mom began sexually abusing him when he was 3 years old, while living in New Mexico. While living in Glendive, Montana, when he was about 6 years old, his parents allowed him to stay home from school and get "super drunk." (*Id*. at 14.) He passed out. When he woke up, Walton's penis was penetrating his anus. Walton told him that it would stop hurting, while his mom held his hand, telling him it would be okay. (*Id*.)

Hammond next interviewed Walton's oldest daughter, who disclosed sexual abuse by both parents, beginning when she was 4 years old while the family lived

in North Dakota. The sexual abuse continued throughout her childhood. She recalled that the last time Walton subjected her to sexual intercourse had been in Glendive when she was 13 or 14 years old. She woke up in the middle of the night to Walton's penis penetrating her vagina. She further reported that on June 26, 2022, Jason Geiger had come to the family's home. Walton tried to get her to use methamphetamine with him. Walton told her that he and Geiger wanted to have sex with her. Walton asked her to take nude photographs and send them to Geiger. Walton also wanted her to put drugs into everyone's drinks so they could all be high and have an orgy. Walton even wanted her to put drugs in her 9-year-old sister's drink and wanted her little sister to be raped.

## II. The change-of-plea and sentencing hearings

At the beginning of the change-of-plea hearing, the district court placed Walton under oath and questioned him about his mental state, his review and understanding of the plea agreement, his consultation with his attorney about the plea agreement, whether he had had adequate time to review and consider the agreement, and whether he was satisfied with the services of his attorney. (Plea Change Tr. at 4-6.)

The court inquired whether Walton understood that some of the offenses to which he planned to plead guilty carried mandatory minimum sentences. Walton

answered in the affirmative. (*Id*. at 7.) The court reviewed the rights Walton would be waiving by pleading guilty and inquired whether Walton felt pressured by anyone to enter his guilty pleas. Walton stated that he understood his rights and absolutely was not being pressured into entering a plea agreement and pleading guilty. (*Id*. 8-9.)

The court reviewed the terms of the plea agreement and Walton confirmed that those terms reflected his understanding of the plea agreement. (*Id*. at 11.) The court asked Walton if he understood that the court was not bound by the plea agreement, and if it were to impose a sentence greater than the sentence the State intended to recommend, Walton would not be able to withdraw his guilty pleas. Walton stated that he understood. (*Id*. at 12.) The court informed Walton of the maximum sentences for each offense, including mandatory parole restrictions. (*Id*. at 13-18.) Walton pled guilty to each offense. (*Id*.) After Walton provided a factual basis for each offense, the district court found that he had voluntarily entered his plea and accepted the guilty plea for each offense. (*Id*. at 20-31.)

At the August 29, 2023 sentencing hearing, the State did not call any witnesses. (8/29/23 Transcript of Sentencing Hearing [Tr.].) Walton called two witnesses in an unsuccessful bid to establish an exception to the mandatory minimum sentence, but this effort was unsuccessful. (*Id*. at 14-38.) The parties stipulated to the court considering the psychosexual evaluation be filed under seal.

(*Id*. at 40.) Walton indicated there were no factual inaccuracies in the PSI that needed correction. (*Id*. at 41.)

The State recommended the exact sentence for each offense that it had promised to recommend in the plea agreement, including that the sentences should all run concurrently. (*Id*. at 47-48.) Since Walton intended to recommend lesser sentences for Counts I through IV, the State indicated its remarks were primarily addressing the appropriate sentences for these four offenses. (*Id*. at 49.) The State's remarks were made only to support the State's sentencing recommendations. (*Id*. at 50-52.)

Without objection, the State asked the court to consider an additional parole restriction of 15 years for the offenses that carried a 25-year mandatory parole restriction. (*Id*. at 53.) In so doing, the State asked the court to consider how long Walton had subjected his victims to sexual abuse, the number of victims, that Walton had a high risk to reoffend, the life-long repercussions for the victims, and Walton's own statements. (*Id*. at 53-54.)

Without objection, the State additionally recommended that the district court impose chemical treatment as part of Walton's sentence, as provided in Mont. Code Ann. § 45-5-512. (*Id*. at 55.)

Walton joined in the State's sentencing recommendations for Counts I and V-VIII. (*Id*. at 57.) Walton recommended that for Counts II-IV the court impose a

40-year sentence for each count to run concurrently, without any parole restriction. (*Id*. at 57, 60-61.) Walton made a statement to the court before the court imposed the sentence. (*Id*. at 64-66.) Prior to announcing the sentence, the court detailed everything it had considered to arrive at the sentence, some of which favored Walton and some of which did not. (*Id*. at 69-73.)

For Count I, the court imposed the sentence the State recommended. (*Id*. at 76.) For Count II, the court imposed the sentence the State recommended. (*Id*. at 77.) For Count III, the court imposed a 75-year prison sentence, while the State had recommended a sentence of 100 years in prison. (*Id*.) The court imposed the same sentence for Count IV, for which the State had recommended 100 years in prison. (*Id*.) The court followed the parties' recommendation of a 5-year prison sentence for Counts V and VIII. (*Id*. at 78-79.) For Count VI, the court imposed a 30-year prison sentence, as both parties had recommended. For Count VII, the court imposed a sentence of 30 years, which was 10 years more than the State had recommended. (*Id*.)

Based on Walton's risk to reoffend, his sexual attraction to children, and protection of society, the court imposed a 15-year parole restriction in addition to the mandatory 25-year parole restriction. The court explained:

> Without having the parole restriction and supervision for life, the Court cannot [realize] a sense of public safety for our community, but also for your victims and maybe their, someday, children.

> Other than [everything] previously addressed, the Court takes into account you have a prior endangering the welfare of children conviction, in 2015, related to the use and possession of dangerous drugs. The sentence and conditions in that case did not deter you from offering your daughter drugs and alcohol, and using drugs in the home, while your children were present. You encouraged your own child to get high and drunk and have sex with your friend. You drugged your child to enable yourself to sexually assault her. It's unforgiveable.
>
> Your substance use is excessive, significantly intertwined with these offenses. Being an ad—addicted person to methamphetamine or alcohol is not an excuse for the trauma that has been inflicted upon the children. Voluntary intoxication does not provide any mandatory minimum relief, it's not a defense, it's not a mitigating factor. It's—just adds into this horrific pattern of behavior.
>
> The nature and circumstances of the offense, the number of victims, was growing. Including the 10-year-old friend of your youngest daughter, while you were having a sex party with her mother. Your deviance, judgment, and insight into the harm that you've caused is poor. Your primary uncomfortable reaction to all of this is—per the psychosexual evaluation—is getting caught, more so than being aroused [by] children in se—engaged in sexual activity.

(*Id*. at 81-82.)

## SUMMARY OF THE ARGUMENT

Walton did not object to any part of the State's sentencing recommendation, nor could he have done so. The State kept the promises it made in the plea agreement. The plea agreement did not prohibit the State from recommending a parole restriction or chemical treatment for Walton as provided by statute. Consequently, the State did not violate any term the parties had mutually agreed

upon as evidenced by the plea agreement. Even if this Court were to disagree, Walton has failed to establish that a breach may have tainted or affected the proceedings. The district court did not order chemical treatment for Walton. And the district court thoroughly considered the record before it in conjunction with the State's sentencing policy and made an independent assessment to impose an additional 15-year parole restriction based on legitimate concerns for the victims and public safety that are wholly supported by the record.

## ARGUMENT

### I. The standard of review

Whether the State has breached a plea agreement is a question of law, which this Court reviews de novo. *State v. Lewis*, 2012 MT 157, ¶ 13, 365 Mont. 431, 282 P.3d 679. Because Walton did not object to the State's recommendation for an enhanced parole restriction and chemical treatment as provided by statute, this Court can only review Walton's claim that the State breached the plea agreement under the plain error doctrine. *State v. Rardon*, 2002 MT 345, ¶ 16, 313 Mont. 321, 61 P.3d 132 (*Rardon II*). This Court discretionarily views claimed errors raised for the first time on appeal that implicate a defendant's fundamental constitutional rights where the error may result in a manifest miscarriage of justice, may leave the question of the fundamental fairness of the proceeding unsettled, or may

compromise the judicial process's integrity. *State v. Clemans*, 2018 MT 187, ¶ 20, 392 Mont. 214, 422 P.3d 1210.

## II. Walton has failed to meet his burden of proving plain error review of his assertion the prosecutor breached the plea agreement is warranted when the plea agreement was silent on a parole restriction and chemical treatment.

### A. Introduction

A plea agreement is essentially a contract and is subject to contract law standards. *Lewis,* ¶ 13. As such, the State cannot retain the benefit of the agreement but avoid its obligations under the agreement. *State v. Bowley*, 282 Mont. 298, 314, 938 P.2d 592, 601 (1997).

This Court reviews for plain error sparingly, on a case-by-case basis. *Clemans*, ¶ 20. It is Walton's duty to "firmly convince" this Court of plain error. *Id*. This Court has previously concluded that a breach of a plea agreement implicates a criminal defendant's fundamental constitutional rights. *Rardon*, ¶ 16. In *Rardon*, this Court explained it first must determine whether the prosecutor breached the plea agreement, and, if so, whether the breach may have tainted or affected the fairness of the sentencing proceeding. *Id*. ¶ 17. Walton argues that the State breached the plea agreement by recommending a 15-year parole restriction in addition to the statutorily mandated 25-year parole restriction and chemical treatment as a sexual offender pursuant to Mont. Code Ann. § 45-5-512.

### B. Walton fails to prove that the State breached the plea agreement.

Walton essentially argues that based on the terms of the plea agreement, the State was prohibited from recommending a parole restriction additional to that mandated by statute or chemical treatment of a sexual offender. But the plea agreement was silent on both the parole restriction and chemical treatment of sexual offenders as provided by Mont. Code Ann. § 45-5-512. Walton asserts that if the prosecutor intended to make these recommendations, or recommend any additional legal sentence not in conflict with the plea agreement, he was required to put these terms in the plea agreement. (Appellant's Br. at 12.)

To support his claim, Walton relies upon *State v. Bowley*, 282 Mont. 298, 938 P.2d 592 (1997). The facts in *Bowley* are easily distinguishable from the facts in Walton's case. In *Bowley*, the State entered into an agreement with Bowley that in exchange for his guilty plea to criminal possession of dangerous drugs, the prosecutor would recommend a five-year suspended sentence, and in lieu of the one-year mandatory minimum prison sentence, the prosecutor agreed to an alternative sentence of one year of inpatient or outpatient treatment. *Id*. at 302, 938 P.2d at 594.

During the sentencing hearing, the probation officer who prepared the PSI testified, recommending a five-year prison sentence. The court questioned the prosecutor about the disparity between her recommendation and the probation

officer's recommendation. The prosecutor responded that she had been unaware that Bowley had previously been on probation and had absconded and that the federal system had incarcerated Bowley. *Id*. at 302-03, 938 P.2d at 594-95. The prosecutor then stated that she did not think it mattered much if the court suspended Bowley's sentence for five years or sentenced him to prison for five years. *Id*. at 303, 938 P.2d at 595. The court sentenced Bowley to prison for five years. *Id*.

On appeal, Bowley argued in part that the State breached the plea agreement. This Court agreed, concluding that the prosector effectively endorsed the probation officer's five-year prison sentence recommendation through her comments. *Id*. at 312, 938 P.2d at 600. Here, the State fulfilled the sentencing recommendations it had promised in the plea agreement and did nothing to undermine those recommendations. Instead, it made two lawful recommendations upon which the plea agreement was silent. The State did not call any witnesses and only referenced information from the PSI and sexual offender evaluation to support its sentencing recommendations and to oppose Walton's more lenient recommendations for the most serious crimes.

Walton next suggests that the facts in his case are like those this Court considered in *State v. Rardon*,1999 MT 220, 296 Mont. 19, 986 P.2d 424 (*Rardon I*). The State charged Rardon with one count of sexual intercourse without

consent and two counts of sexual assault. The victims were his two minor daughters. The State and Rardon reached a plea agreement. Under the agreement, Rardon pled guilty to one count of sexual assault in exchange for the State dismissing the other two charges. The State further agreed to recommend a sentence that would conform to what the sexual offender evaluator and PSI author recommended. *Id*. ¶¶ 3-4.

The sexual offender evaluator recommended outpatient treatment without any term of years. The PSI author recommended 40 years in prison with 20 years suspended. *Id*. ¶¶ 6-7. At the sentencing, the State recommended that the court sentence Rardon to prison for 70 years without parole for at least 30 years and until Rardon completed the Sexual Offender Treatment Program. *Id*. ¶ 8. The district court sentenced Rardon to prison for 75 years with 15 years suspended and restricted his parole for 35 years. *Id*. ¶ 9. The State conceded, and this Court agreed, that the State had breached the plea agreement. *Id*. ¶ 15. There is no factual similarity between *Rardon I* and Walton's case. Here, the State fulfilled its commitment under the plea agreement, which did not prohibit the State from making other lawful sentencing recommendations.

Walton's reliance upon *State v. Rahn*, 2008 MT 201, 344 Mont. 110, 187 P.3d 622, is likewise misplaced. The State and Rahn reached a plea agreement resolving two cases. Rahn agreed to plead guilty to a 2004 charge of sexual

intercourse without consent and one count of tampering with witnesses, and the State agreed to dismiss charges of felony intimidation, a 2005 charge of sexual intercourse without consent, and one count of tampering with witnesses. *Id*. ¶ 5. Regarding the sexual intercourse without consent charge, the State agreed to recommend 20 years in prison with 10 years suspended and that Rahn not be eligible for parole until he completed phases 1 and 2 of the Sexual Offender Treatment Program. The State's offer was contingent upon the sexual offender evaluator designating Rahn as a Level 1 or 2 sexual offender. Finally, the State agreed to recommend a concurrent five-year prison sentence for the tampering with witness charge. *Id*.

At the sentencing hearing, Rahn presented testimony from the sexual offender evaluator that Rahn was a high Level 2 sexual offender. Over Rahn's objection, the State presented testimony from another sexual offender evaluator who had not evaluated Rahn but attacked the validity of the previous evaluator's level designation. The State's witness opined that Rahn was a Level 3 sexual offender. The State urged the court to designate Rahn as a Level 3 sexual offender and sentence him to prison for 30 years with 10 years suspended. *Id*. ¶ 6. The district court sentenced Rahn in accordance with the State's recommendation. *Id*. ¶ 7.

On appeal, this Court concluded that Rahn had complied with the terms of the plea agreement but the State breached the agreement by calling another sexual offender evaluator to challenge the level designation. *Id*. ¶ 23.

Again, the facts of *Rahn* are easily distinguishable. Walton claims that the State lured him into pleading guilty and then pulled a bait and switch by recommending an additional 15-year parole restriction and statutorily authorized chemical treatment. (Appellant's Br. at 12.) The State recommended the prison terms it promised in the plea agreement and presented nothing to undermine those recommendations. The plea agreement was silent on the parole restriction and chemical treatment recommendations.

This Court considered a similar issue to that Walton has raised in *Lewis*, 2012 MT 157. In *Lewis*, the parties reached a plea agreement under Mont. Code Ann. § 46-12-211(1)(b). Lewis agreed to plead guilty or no contest to aggravated assault in exchange for the State dismissing a charge of assault on a minor. The parties agreed that their respective sentencing recommendations would fall within a specified range. The plea agreement did not address the district court's authority to restrict Lewis' parole eligibility and there was no commitment from the State concerning a parole restriction. The agreement provided that the parties were otherwise free to argue for any other lawful sentence. *Id*. ¶ 2.

At the change-of-plea hearing, the parties confirmed their obligations under the plea agreement. The State indicated that it would not seek a parole restriction. The district court explained to Lewis that if the court did not follow the plea agreement, it would allow Lewis to withdraw his guilty plea. The PSI author recommended a parole restriction until Lewis completed in-patient chemical dependency treatment and other rehabilitative programs. Lewis took issue with this recommendation. In Lewis' sentencing memorandum, he argued only that the district court had no authority to impose restrictions on his early release because that determination could only be made by the Department of Corrections. *Id*. ¶¶ 4-5.

At the sentencing hearing, the State recommended the sentence it had promised in the plea agreement. In responding to Lewis' sentencing memorandum, the State noted that the court had statutory authority to restrict Lewis' parole eligibility but did not recommend a parole restriction, instead leaving it to the discretion of the court. The court accepted the plea agreement and sentenced Lewis in accordance with the agreement, but ordered that Lewis was not eligible for parole. Lewis objected that the district court had not sentenced him in accordance with the plea agreement because it imposed a parole restriction. The district court stated that the plea agreement was silent on parole eligibility, and therefore the district court was permitted to impose a restriction. *Id.* ¶ 8.

Lewis later filed a motion for specific performance of the plea agreement. The State responded, arguing that the district court was free to impose a parole restriction. Lewis replied that if the State was advocating in a manner that resulted in the retention of the parole restriction, this would arguably constitute a breach of the agreement. The district court denied the motion, and Lewis appealed, arguing that the district court's imposition of the parole restriction violated the plea agreement and that the prosecutor had breached the plea agreement. *Id*. ¶¶ 9-11.

In considering Lewis' claim that the district court imposed a sentence contrary to the plea agreement, this Court observed that the plea agreement was silent regarding parole eligibility, thus the plea agreement clearly demonstrated that the parties did not come to an agreement on whether Lewis' sentence would include a parole eligibility restriction. The Court added that the agreement permitted either party to recommend any other lawful sentence. *Id*. ¶ 17. The Court also rejected Lewis' claim that the prosecutor's representation at the plea change hearing that he would not seek a parole restriction was a clarification of the terms of the plea agreement. *Id*. ¶ 18-19. This Court held that the district court was "within its authority to accept the plea agreement and impose a parole restriction without offering Lewis the opportunity to withdraw his plea." *Id*. ¶ 18

This Court declined to consider Lewis' unpreserved claim that the prosecutor breached the plea agreement based on the comments he made at the

sentencing hearing because the claimed error did not raise a question about the fundamental fairness of the proceeding. *Id*. ¶¶ 21-22.

Finally, this Court rejected Lewis' claim that the prosecutor breached the plea agreement when he advocated for the district court to deny Lewis' motion for specific performance of the plea agreement. In responding to Lewis' motion, the prosecutor was rebutting Lewis' contention that a parole restriction violated the plea agreement. *Id*. ¶¶ 22-23.

Walton argues that, because the plea agreement had a provision that the parties were otherwise free to recommend any other lawful sentence, *Lewis* is inapplicable. Regardless of this distinction, here, the parties did not reach an agreement on parole eligibility or chemical treatment. The State made no promise in this regard and did not violate the terms that the parties mutually agreed upon. In *State v. Hill*, 2009 MT 134, 350 Mont. 296, 207 P.3d 307, Hill argued that the State breached the plea agreement when it agreed to dismiss a charge but then used that dismissed charged to support its sentencing recommendation. This Court observed that in the plea agreement the State did not agree to refrain from reminding the court about the dismissed charged, and there was no term in the plea agreement that prevented the State from doing so. Consequently, the State did not violate the plea agreement. *Id.* ¶¶ 30-31 (*see also State v. Tourville*, 876 N.W.2d 735, 743-44 (Wis. 2016) (When a plea agreement is silent regarding concurrent or

consecutive sentences, the defendant has not bargained for the State's promise to refrain from recommending the sentences be served consecutively.).

Because the State did not breach the plea agreement, there is no further analysis required. Even if this Court were to disagree, Walton has failed to show that a breach may have tainted or affected the proceedings.

### C. Walton fails to prove that a breach may have tainted or affected the proceedings.

The district court did not order Walton to undergo chemical treatment as Mont. Code Ann. § 45-5-512 allows, so the State's recommendation in this regard did not taint or affect the sentencing proceedings.

Regarding the additional 15-year parole restriction, the district court did not simply rubber stamp the State's recommendations. The record establishes that the district court made a careful and independent review of the record before crafting the appropriate sentence for Walton. Walton's crimes were horrific, he presented a clear danger to all children, and he had little insight into the indescribable harm he had inflicted upon his victims. The district court's parole restriction is lawful and the record before the district court overwhelmingly supports it, regardless of the State's recommendation.

## CONCLUSION

The State respectfully requests that this Court decline plain error review because the prosecutor did not breach the agreement by making recommendations upon which the plea agreement was silent and that the Court affirm the judgment of the district court.

Respectfully submitted this 12th day of May, 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 6,499 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

*/s/ Tammy K Plubell*
TAMMY K PLUBELL

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0027

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MONTE RAY WALTON, SR.,

Defendant and Appellant.

## APPENDIX

## CERTIFICATE OF SERVICE

I, Tammy K Plubell, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 05-12-2025:

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