IN THE SUPREME COURT OF THE STATE OF MONTANA
CAUSE NO. DA 24-0037

STATE OF MONTANA,

Plaintiff and Appellee,

and

ANDREW DAVID LARSON,

Defendant and Appellant.

Appellant/Defendant's Opening Brief

On Appeal from the District Court of the Twenty-first Judicial District Court of the State of Montana, In and For Ravalli County

Before the Honorable Jennifer B. Lint
Cause No. DC-20-26

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STATEMENT OF THE ISSUES

I. **Did the district court abuse its discretion when it denied Larson's motion to withdraw his guilty plea, when the plea was not voluntarily and knowingly made following an inadequate colloquy with the district court?**

II. **Did the district court erroneously require Mr. Larson to pay restitution for losses, absent a causal connection between his offense and those losses?**

III. **Did the district court fail to properly award time served when the district court acknowledged the time served at sentencing but failed to include the calculated amount of time served in its judgment?**

STATEMENT OF THE CASE

The present case involves the story of Appellant Andrew Larson ("Larson"), who on the day of February 17, 2020, stole a red 2003 F-350 welding truck from Neff's Welding. Larson drove the vehicle southbound on Hwy 93 and after approximately 27 miles went off the road into a snowbank. He then unsuccessfully attempted to get the Ford F-350 out of the snowbank with the help of a passerby. After the unsuccessful attempt to get the pickup unstuck, he abandoned the vehicle and went skiing.

Larson initially entered a plea of guilty to theft exceeding $5,000, but then attempted to withdraw his guilty plea, the district court denied his motion. At the time of the change of plea, Larson had not completed a signed acknowledgment of rights, or signed a plea agreement and the district court did not conduct a thorough colloquy to determine if at the time Larson was acting knowingly and voluntarily.

After recovering the truck, the owner claimed the engine had been damaged causing the welding company loss of over a year's use of the vehicle, at approximately $1,000 per month, along with cost to repair the vehicle. Based upon the owner's claims the district court awarded $23,680.12 in restitution.

SUMMARY OF ARGUMENT

The district court abused its discretion by denying Larson's motion to withdraw his guilty plea because it was not given knowingly and voluntarily. The district court did not comply with the statutory requirements to determine if Larson understood the consequences of entering a guilty plea, and did not conduct an adequate colloquy, making Larson's guilty plea involuntary.

The Court improperly awarded restitution to the complaining witness when there was insufficient evidence of a causal connection between the criminal conduct (theft of the motor vehicle and subsequent abandonment in a snowbank), to which defendant admitted and pled to and claimed amount of loss based upon the lost use of the vehicle.

The Court improperly awarded restitution to the complaining witness when it awarded damages for lost use of the vehicle after the owner had taken the vehicle to be repaired and was unhappy with the outcome of those repairs, and thereafter choose not when the District Court's use of replacement value of property destroyed--rather than its actual market value at the time of the event--to measure the

complaining witness' pecuniary loss was an error of law that resulted in a significantly higher estimation of Larson's restitution obligation.

The Court failed to include credit for time served in its judgment, and the Judgment should be corrected to reflect the appropriate amount of time served.

STATEMENT OF FACTS

On February 17, 2020, Larson stole an F-350 welding truck belonging to Neff's Welding, and while driving the truck ran off the road and became stuck in a snowbank. See Doc. 1., Motion for Leave to File Information and Affidavit in Support. Larson abandoned the truck and was later arrested at a nearby ski lodge. *Ibid*. Larson was charged by information with Theft of Property Exceeding $5,000 and Obstructing a Peace Officer. Doc. 6, Information.

The case progressed and on March 4, 2021, the district court convened a change of plea hearing. See Transcript of Proceedings, March 4, 2021, Change of Plea Hearing ("Tr. COP"), page 1. At the outset of the hearing, Larson's counsel informed the district court that Larson had not signed the guilty plea and waiver of rights but that it was discussed with Larson over the phone. *Id*., 3:10-18.

The district court noted that it had an unsigned version of the plea agreement that called for the obstruction charge to be dismissed, for Larson to enter a guilty plea to the theft charge, and that the parties would jointly recommend a six-year

deferred imposition of sentence, and for Larson to serve between 13 and 30 days in the county jail. *Id*., 3:19-4:10; 5:5-20.

The district court inquired of Larson:

> Mr. Larson, your attorney has indicated she has reviewed with you the rights that you're waiving with your anticipated change of plea today. Those rights are things like the right to a jury trial, right to call witnesses on your own behalf, the right to challenge the state's evidence. Do you recall reviewing those rights with Ms. Busch?
>
> MS. BUSCH: Andrew, you're on mute.
>
> THE DEFENDANT: How about now?
>
> THE COURT: Yep, we got you.
>
> MS. BUSCH: There you go.
>
> THE DEFENDANT: Yeah, I understand completely what was discussed.
>
> THE COURT: And you had a chance to review over the phone the plea agreement with Ms. Busch?
>
> THE DEFENDANT: Correct.

Id., 4:11-5:1.

After which, Larson entered a guilty plea to the theft count and responded to questioning by his counsel to lay the factual foundation for the guilty plea. *Id*., 7:3-23. The district court then accepted the guilty plea and set a sentencing hearing. *Id*., 7:24-9:4.

On March 18, 2021, Larson signed and filed a written "Guilty Plea and Waiver of Rights." Doc. 53.

On June 17, 2021, at a status hearing, Larson's counsel advised the district court that Larson intended to withdraw his guilty plea, and the district court directed Larson to file a motion by July 14, 2021. See Doc. 60.10, Minute Entry.

On July 14, 2021, Larson filed his first Motion to Withdraw Guilty Plea. Doc. 61.

The Plea Agreement, apparently signed by Larson on March 18, 2021, was filed on July 28, 2021. Doc. 63.

On July 30, 2021, Larson received new counsel, the reason for this change does not appear in the record. Doc. 65, Notice of Substitution of Counsel.

On August 2, 2021, the State filed its response to Larson's motion to withdraw his guilty plea. Doc. 66.

On September 9, 2021, the district court held a hearing on Larson's motion at which the State requested a more definitive motion from Larson because Larson's first motion was lacking in detail. Doc. 67.10, Minute Entry. The district court set a follow-up hearing with the intention of setting a briefing schedule at the next hearing. *Ibid*.

Larson filed his second Motion to Withdraw his Guilty Plea on November 5, 2021. Therein expanding upon the reasons for requesting to withdraw his guilty plea and alleging:

> "Before, and since Mr. Larson was charged with these offenses, he has been getting medical care for a multitude of physical and mental ailments. Mr. Larson has been diagnosed with severe cardiac issues with the possibility of sudden cardiac death. Further, Mr. Larson has been diagnosed with severe chronic major depression in part because of his chance of sudden death. Dr. Paul Shingledecker from Sapphire Community Health who is the diagnosing physician has recommended an inpatient psychiatric evaluation and follow-up treatment."
>
> …
>
> "Mr. Larson contends that he simply was not in a stable mind set during his March 4, 2021, Change of Plea Hearing. He contends that his mental health, along with concern about his physical health and not being present with his attorney in the court room led him to enter a plea of guilty without it being voluntarily. After realizing the ramifications of what had occurred at the Change of Plea Hearing, Mr. Larson immediately informed prior counsel of his intention of withdrawing his plea."

Doc. 70.00.

On January 19, 2022, the district court convened a hearing on Larson's motion, but Larson did not appear at the hearing. Doc. 75.10. However, Larson appeared from custody on January 11, 2022, and January 27, 2022, and at both hearings his motion to withdraw Larson's guilty plea was addressed in some form. See Doc. 74.10 and 75.20.

On January 28, 2022, the district court issued its one-line order denying Larson's motion to withdraw his guilty plea. Doc. 76.

The next day, the State filed a notice of intent to deviate from plea agreement, alleging Larson had committed new crimes which relieved the State of its obligations under the plea agreement. Doc. 77.

Thereafter, the case proceeded to sentencing, where the district court ultimately sentenced Larson to 10 years, with 5 suspended, to be served with the Department of Corrections. Doc. 90.

During the sentencing hearing:

Mr. Neff, owner of Neff's Welding, testified that he had replaced his truck's engine somewhere between 80,000 and 100,000 miles prior to it being stolen. Transcript of Proceedings, October 11, 2022, Sentencing ("Tr. Sent."), 11:5-11. Mr. Neff stated after Larson driving and abandoning the truck in a snowbank, there was engine damage that required repairs. *Id*., 7:19-20.

Mr. Neff explained that as of March 18, 2021, his losses for not being able to use the truck for the previous year were $2,500. *Id*., 10:2:10. However, in the year leading up to sentencing, he had lost approximately $1,000 per month because he could have sent out a second welding truck. *Id*., 10:20-11:1.

On Cross examination, Mr. Neff admitted his insurance totaled the truck providing a valuation of "$9,200 or something," which he took and "tried to have

the truck fixed, and it's still not fixed." Tr. Sent. 13:12-21. After Mr. Neff paid to have the truck repaired, he picked up the truck and drove it but was unhappy with how the truck was performing. *Id*., 14:7-20. After recovering the vehicle from the repair shop, and being unhappy with the repair, Mr. Neff returned the truck to his property, and it sat there until sentencing. *Id*., 14:17-20.

During the Court's oral pronouncement, the parties discussed as follows:

> THE COURT: As to restitution, the automotive estimate of $11,580.12, plus the $100 for the chokers, plus Mr. Neff gave credible evidence that when he had two trucks working that would be an additional $1,000 a day and that would happen at least once a month. His affidavit already had $2,600 on it, so I will add another 12,000 to that. Because he's received $9,200 in insurance money, insurance companies are a valid victim. However, I am going to direct as restitution comes in that it gets paid first to Mr. Neff; and at some point, if that actually all gets paid, then we'll start working on the $9,200 to the insurance company.
>
> MR. LAKIN: Just as regards restitution. What my notes indicate--and I will go through sort of the categories that you stated--$11,580.12 to repair the vehicle, $100 for the chokers, 12,000 plus 2,500 for lost wages, so 14,500 for lost wages.
>
> THE COURT: I'm not going to say lost wages. I'm going to say loss of use of the vehicle.
>
> MR. LAKIN: Loss of use of the vehicle. That's correct. That would be a much better way. Thank you. In addition, the 9,329 that Progressive has into it, or is that--
>
> THE COURT: That would be actually taken off of that estimate. But what I specifically want in the prioritization-

> -and I'll put this in the judgment, because, of course, restitution gets paid through Probation--is that Mr. Neff gets paid back first. If then we get 15,000 some odd dollars that's come Mr. Neff's way, then anything above that can be apportioned towards the insurance company if they make a claim. If they don't make a claim in this, then it's just restitution to Mr. Neff.
>
> MR. LAKIN: So that would be what I would be asking about next. I think in order -- I think it should go to Mr. Neff and that he may be liable on a subrogation claim from the insurance company, but that is restitution owing from Mr. Larson regardless. And whether or not the insurance company chooses to pursue Mr. Neff for that amount, that's up to them.
>
> THE COURT: And that's a better way to put it. Yes, you're correct. So the restitution will be to Mr. Neff, and that's up to his insurance company what they want to do.

Ultimately the Court sentenced Larson to the custody of the Department of Corrections for a period of ten (10) years, with five (5) of those years suspended The but failed to include any credit for time Larson served. Doc. 90. The Court also obligated Larson to pay restitution in the total amount of $23,680.12, for damages incurred by Craig Neff.

STANDARDS OF REVIEW

I. This Court reviews the denial of a motion to withdraw a guilty plea for abuse of discretion, considering (1) the adequacy of the court's interrogation regarding the defendant's understanding of the consequences of the plea; (2) the promptness with which the defendant attempts to withdraw the plea; and (3) whether the plea

was the result of a plea bargain in which the plea was given in exchange for dismissal of another charge. *State v. Schaff*, 1998 MT 104, ¶ 18, 288 Mont. 421, 958 P.2d 682, *overruled in part on other grounds by State v. Deserly*, 2008 MT 242, ¶ 12 n.1, 344 Mont. 468, 188 P.3d 1057.

II. Whether a guilty plea was voluntary is a mixed question of law and fact reviewed de novo. *State v. Warclub*, 2005 MT 149, ¶ 17, 327 Mont. 352, 114 P.3d 254.

III. This Court reviews criminal restitution orders for compliance with §§ 46-18-241 through - 249, MCA. *State v. Pierre*, 2020 MT 160, ¶ 10, 400 Mont. 283, 466 P.3d 494.

IV. "Calculating credit for time served is not a discretionary act, but a legal mandate." *State v. Parks*, 2019 MT 252, ¶ 9, 397 Mont. 408, 450 P.3d 889 (quoting *State v. Hornstein*, 2010 MT 75, ¶ 12, 356 Mont. 14, 229 P.3d 1206). As such, a lower court's determination of credit for time served is reviewed de novo for legality. *Parks*, ¶ 7 (citations omitted).

ARGUMENT

I. The District Court Abused its discretion When it Denied Larson's Motion to Withdraw his Guilty Plea

At any time before judgment or within one year after judgment becomes final, a trial court may, "for good cause shown," permit a plea of guilty or nolo contendere to be withdrawn and a plea of not guilty be substituted. Mont. Code Ann. § 46-16-

105(2). Good cause "to allow a plea withdrawal includes involuntariness of the guilty plea, inadequate colloquy demonstrating a knowing and intelligent plea, ineffective assistance of counsel, discovery of new evidence, and other factors." *State v. Partain*, 2025 MT 83, ¶ 22, 2025 Mont. LEXIS 443, 2025 LX 65973, citing to *State v. Wise*, 2009 MT 32, ¶ 16, 349 Mont. 187, 203 P.3d 741.

This Court reviews district court's denial of a motion to withdraw a guilty plea for abuse of discretion, considering (1) the adequacy of the court's interrogation regarding the defendant's understanding of the consequences of the plea; (2) the promptness with which the defendant attempts to withdraw the plea; and (3) whether the plea was the result of a plea bargain in which the plea was given in exchange for dismissal of another charge. *State v. Ernst*, 2025 MT 89, ¶ 17, 2025 Mont. 445, 2025 LX 34707, citing *State v. Schaff*, 1998 MT 104, ¶ 18, 288 Mont. 421, 958 P.2d 682, overruled in part on other grounds by *State v. Deserly*, 2008 MT 242, ¶ 12 n.1, 344 Mont. 468, 188 P.3d 1057.

If there is any doubt that a guilty plea was not voluntarily or intelligently made, the doubt must be resolved in favor of the defendant. *State v. Melone*, 2000 MT 118, ¶ 14, 299 Mont. 442, 2 P.3d 233.

A. The District Court's Interrogation of Larson Regarding the Consequences of Larson's Guilty Plea was inadequate.

Prior to accepting a guilty plea, the district court must satisfy the statutory requirements set forth at Mont. Code Ann. §§ 46-16-105, and 46-12-210. *State v. Roach*, 1999 MT 38, ¶ 9, 293 Mont. 311,975 P.2d 817.

Mont. Code Ann. § 46-16-105, provides in part that:

(1) Before or during trial, a plea of guilty may be accepted when:

(a) . . . the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

Additionally, Mont. Code Ann. § 46-12-210(1), requires that:

Before accepting a guilty plea, the court shall determine that the defendant understands the following:

(a)

(i) the nature of the charge for which the plea is offered;

(ii) the mandatory minimum penalty provided by law, if any;

(iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and

(iv) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;

(iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction.

…

(c) that the defendant has the right:

(i) to plead not guilty or to persist in that plea if it has already been made;

(ii) to be tried by a jury and at the trial has the right to the assistance of counsel;

(iii) to confront and cross-examine witnesses against the defendant; and

(iv) not to be compelled to reveal personally incriminating information;

(d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

(e) that if the defendant's plea of guilty or nolo contendere is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and

(f) that if the defendant is not a United States citizen, a guilty or nolo contendere plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

The requirements of § 46-12-210 may be accomplished by the filing of a written acknowledgment of the defendant's rights. Mont. Code Ann. § 46-12-210(2).

In addition to the statutory requirements, based upon the unique circumstances of each case, district courts may be need to make further inquiry of a defendant to determine if the plea is knowing, intelligent and voluntary. For instance, this Court has directed the withdrawal of a guilty plea when a district court did not determine

the defendant was not acting under the influence of drugs or alcohol. *State v. Bowley*, 282 Mont. 298, 306, 938 P.2d 592, 596 (1997), citing *Enoch*, 887 P.2d at 180-81. This is not to say that a district court is required to explain every right the defendant may be waiving or to go beyond the statutory requirements, instead, this Court has made clear that absent unique circumstances, district courts are only required to meet the statutory requirements and nothing more. *State v. Otto*, 2012 MT 199, ¶ 18, 366 Mont. 209, 285 P.3d 583.

Moreover, this Court has found the determination by the district court must be based upon current information and advice to a defendant and not "based on information provided to a criminal defendant in bits and pieces over a long period of time." *State v. Bowley*, 282 Mont. 298, 307, 938 P.2d 592, 597 (1997), quoting *State v. Enoch*, 269 Mont. 8, 11, 887 P.2d 175, 180 (1994) (an acknowledgment of rights form signed six months prior to entering a guilty plea was not timely and did not satisfy rights advisement requirements).

These advisements must come from the court, not any other party because it is the duty of the court to determine whether the defendant is properly advised and understands the consequences of entering a guilty plea. *Melone*, ¶¶ 19-21 (notice by the prosecutor of the State's intention to seek the defendant's treatment as a persistent felony offender inadequate because the court did not advise the defendant,

and it was the court's duty to determine the defendant understood the maximum penalties).

In Larson's case, the court made a short inquiry of Larson, informing Larson that he was waiving certain rights, and that those rights were "…things like the right to a jury trial, right to call witnesses on your own behalf, the right to challenge the state's evidence." Tr. COP, 4:11-16.

This inquiry simply fails to meet the statutory requirements, specifically the district court did not advise Larson of the maximum penalty that could be imposed, or that district court was not required to accept the terms of the plea agreement and could sentence Larson to the maximum sentence allowed by law. See Mont. Code Ann. §§ 46-16-105(1)(a) and 46-12-210(1)(a)(iii) & (d).

Further, the district court failed to advise Larson regarding restitution, although it was discussed at the change of plea hearing. Tr. COP, 5:21-25; 8:3-17; see Mont. Code Ann. § 16-12-210(1)(a)(iv).

Moreover, the district court did not advise Larson that he had the right to:

> (i) to plead not guilty or to persist in that plea if it has already been made;
>
> (ii) to be tried by a jury and at the trial has the right to the assistance of counsel;
>
> (iii) to confront and cross-examine witnesses against the defendant; and

> (iv) not to be compelled to reveal personally incriminating information;

Mont. Code Ann. § 16-12-210(1)(c).

Finally, the district court did not advise Larson that if he was not a U.S. citizen that he might be subject to deportation. Mont. Code Ann. § 46-12-210(1)(f).

Additionally, in his second motion to withdraw his guilty plea, Larson contends that at the time of the change of plea, he was suffering from mental health issues that caused him to act involuntarily. Had the district court made a through inquiry of Larson, it may have ferreted out any mental health concerns or otherwise been able to advise Larson in such a manner as to dispel the mental health concerns. By not conducting the statutorily required inquiry, the district court had no opportunity to detect Larson's state of mind, and as such Larson's claimed mental state must be taken as true, making Larson's plea involuntary and unintelligent.

The State will likely argue that these failures to advise Larson constitute harmless error, and that all of them were overcome by Larson signing and filing a Guilty Plea and Waiver of Rights. Admittedly, the failure to advise Larson of the possibility of deportation was probably harmless error, but the other failures were not. In his Motion to withdraw his guilty plea, Larson specifically claims he was unaware of the ramifications of entering his guilty plea which is the exact issue the statutory protections are there to prevent. This Court has repeatedly held that a failure to advise a defendant of the maximum possible sentence at the change of plea

hearing requires a district court to allow the defendant to withdraw his guilty plea. See *Roach*, ¶ 17; *Melone*, ¶¶ 17-18.

Likewise, the State's likely argument that Larson signed a written acknowledgement fails because it was signed after the change of plea occurred, and not just a few days after but fourteen days after the change of plea occurred, so the district court could not have relied upon the written acknowledgement. Moreover, it appears that Larson had not seen the written documents at the time of the change of plea but had only reviewed the contents over the phone with his attorney.

The district court's failure to properly advise Larson and failure to determine if Larson was acting voluntarily and knowingly when entering his plea of guilty require reversal with directions to allow Larson to withdraw his guilty plea.

B. Larson Promptly Attempted to Withdraw his Guilty Plea

This Court has found a two-month separation between entering a guilty plea and moving to set that plea aside to be timely. *State v. Schaff*, 1998 MT 104, ¶ 27, 288 Mont. 421, 958 P.2d 682.

Larson entered his plea of guilty on March 4, 2021, then on June 17, 2021, at the next hearing advised the district court of his intention to withdraw his guilty plea. This is roughly three months after his entry of a guilty plea, and the first opportunity for Larson to be before the district court.

This was prompt and timely action by Larson, who acted at his first opportunity before the district court, and before the plea agreement was even filed with the district court. Larson then followed up his oral motion with multiple written motions, and within his second motion alleged after "…realizing the ramifications of what had occurred at the Change of Plea Hearing, Mr. Larson immediately informed prior counsel of his intention of withdrawing his guilty plea."

Larson's motion to withdraw his plea was timely and prompt.

C. Larson's Guilty Plea was Not Based Upon Dismissal of Another Charge

Although phrased as a determination if the plea agreement were based upon "dismissal of another charge," this factor is actually a determination of whether the defendant benefitted from the plea agreement. *Montana v. White*, 2004 MT 103, ¶ 26, 321 Mont. 45, 88 P.3d 1258. In order to prevail on this factor, a defendant must show there existed no consideration to support the plea agreement in order to invalidate it. *Id*., ¶ 25.

While on the surface this factor weighs in favor of the State, upon further consideration, Larson did not receive such a great benefit from the plea agreement as to overcome the other two factors this Court considers.

Larson was charged with Theft exceeding $5,000, a felony, and Obstructing a Peace Officer, a Misdemeanor. The plea agreement called for Larson to receive a six-year deferred sentence, and for the State to dismiss the misdemeanor obstruction

charge, and for Larson to pay all legally claimed restitution. As this was Larson's first felony conviction, he was eligible for a deferred imposition of sentence, pursuant to Mont. Code Ann. § 46-18-201, with six years being the maximum deferral period. Mont Code Ann. § 46-18-201(1)(a)(ii). Making this the likely outcome of any guilty finding on the theft count. Moreover, dismissal of a misdemeanor in exchange for a felony is a benefit, but not such a great benefit because of the disparity in sentencing possibilities.

Importantly, as the agreement was written, Larson stood to serve minimal incarceration and still wished to withdraw his guilty plea. It was only later that the State moved to be released from the plea agreement, based upon new allegations of criminal charges against Larson. So, Larson's motivation to withdraw his guilty plea was not motivated by the possibility of a lengthy period of incarceration.

As Larson stood at the time of moving to withdraw his guilty plea, he was benefitting from the plea agreement but so much so as to be seen as a windfall or so substantial that it overcomes the other two factors.

II. The District Court Improperly Awarded Restitution that was not Causally Connected to Larson's Criminal Actions.

Upon sentencing in a criminal case, courts must require defendants to pay restitution in an amount sufficient to fully compensate victims for all pecuniary loss substantiated by record evidence to have been caused by the defendant's criminal conduct. Mont. Code Ann. §§ 46-18-201(5), 46-18-241(1), and 46-18- 243(1).

Direct or indirect causal relation between the offender's criminal conduct and asserted pecuniary loss is the touchstone for determining entitlement to restitution. There is a "causal standard" embodied in § 46-18-243(1)-(2). Paraphrased as a causation standard, an offender's statutory restitution obligation is expressly limited, as pertinent, to loss suffered as a result of the commission of an offense and constituting substantiated special damages recoverable against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities or the replacement cost of property taken, destroyed, harmed, or otherwise devalued as a result of the offender's criminal conduct. §§ 46-18-241(1), 46-18-243(1)(a)-(b), (2)(a)(i)(A), and (2)(a)(ii). Consequently, an offender is responsible only for a victim's pecuniary losses he or she has agreed to pay or that are directly or indirectly caused by an offense he or she committed or is criminally accountable. *State v. Cole*, 2020 MT 259, ¶ 1, 401 Mont. 502, ¶ 1, 474 P.3d 323, ¶ 1

Pursuant to Mont. Code Ann. § 46-18-243(1), "pecuniary loss" includes all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities and the full replacement cost of property taken, destroyed, harmed, or otherwise devalued as a result of the offender's criminal conduct. Section 46-18-243, in essence, grafts a civil remedy into

a criminal case. *State v. Cole*, 2020 MT 259, ¶ 1, 401 Mont. 502, ¶ 1, 474 P.3d 323, ¶ 1.

The State has the burden of proving the requisite causal connection or criminal accountability for restitution in any event. *State v. Aragon*, 2014 MT 89, ¶ 16, 374 Mont. 391, 321 P.3d 841.

In *State v. Cole*, a judgment ordering Cole to pay $31,902.99 in restitution was improper because there was insufficient evidence of a causal connection between the criminal conduct to which defendant admitted and pled, and the apartment renovation expenses asserted. 2020 MT 259, ¶ 1, 401 Mont. 502, 504, 474 P.3d 323, 324.

In *Cole*, Cole admitted to possessing methamphetamine and a glass pipe and pled guilty to Criminal Possession of Dangerous Drugs and Criminal Possession of Drug Paraphernalia, but there was no evidence as to what level or duration of methamphetamine smoking would lead to the contamination found. ¶ 16. There was no evidence defendant was operating any type of methamphetamine lab or that he had actually smoked methamphetamine in the apartment. *Ibid*.

While the district court awarded $31,902.99 in restitution to repair Cole's apartment, this Court determined the award was improper because there was insufficient evidence of a causal connection between the criminal conduct to which defendant admitted, and the apartment renovation expenses asserted. *Id*., ¶ 17.

In the present case, Mr. Neff initially claimed a restitution amount of $2,600 for lost wages, due to the loss of the welding truck for the entire first year, then at sentencing testified that in addition to that amount, he had lost approximately $1,000 per month in the second year because of the lack of use of the welding truck.

Mr. Neff testified that he had replaced his truck engine approximately 100,000 miles prior to it being taken and after the truck was recovered the truck did not run correctly. Tr. Sent. 11:5-11. Mr. Neff's insurance determined the value of the truck to be $9,200, which was paid to Mr. Neff. Tr. Sent. 11:5-11; 13:15-21.

Mr. Neff further claimed that he had an estimate of $11, 330.12 to fully repair the truck's engine, and he had used the $9,200 from insurance to have the truck's engine repaired. Tr. Sent. 8:13-19; 12:23-13:5; 14:7-14. While Mr. Neff's insurance determined to total the truck for a value of $9,200, Mr. Neff determined to keep the truck and have it repaired using the insurance money. Tr. Sent. 12:13-13:21. However, after Mr. Neff paid to have the truck repaired and received it back from the repair shop, the truck did not run correctly, and Mr. Neff parked the truck and never again attempted to use it or get it repaired further. Tr. Sent. 12:23-13:5; 13:15-17.

When Mr. Neff accepted the $9,200 from his insurance company and used that money to repair the truck, the causal relationship between Larson's crime and Mr. Neff's losses was broken. After paying a repair shop to repair the truck, Mr.

Neff was not satisfied with the outcome of the repair, but did not take the truck back to the shop to complain or otherwise take action to correct the situation. Mr. Neff paid for a repair shop to repair the truck; the failure of that repair is not Larson's responsibility.

The date of repair is unclear on the record, but any losses past the return of the vehicle from the repair shop are not the responsibility of Larson and this Court should vacate the restitution and return the case for further fact finding to properly determine the amount of restitution owed by Larson.

III. The District Court Failed to Determine or Award Larson the Appropriate Amount of Time Served in its Judgment.

Section 46-18-201(9), MCA, provides:

> When imposing a sentence under this section that includes incarceration in a detention facility or the state prison, . . . the court shall provide credit for the time served by the offender before trial or sentencing.

The language of § 46-18-201(9), MCA, is clear and unambiguous and makes the determination of credit for time served straight-forward. Title 46, Chapter 18, Part 2, MCA, addresses the "Form of Sentence." Section 46-18-201, MCA, sets forth "Sentences that may be imposed" and applies when a court is imposing an incarceration sentence on a defendant for an offense for which the defendant has been found guilty upon a verdict of guilty, a plea of guilty, or a nolo contendere plea. Subsection (9) requires the court, when imposing a sentence on such an offense, to

provide credit for time served by the defendant before the defendant's trial or sentencing. This is a requirement for the sentencing court, not the Department of Corrections.

Here, at sentencing the district court and parties appeared to agree that Larson should be awarded 312 days of credit for time served. Tr. Sent. 19:10-12. However, in its written judgment, the district court did not provide any credit for time served, rather in its conditions of judgment the district court stated:

> 15. The Defendant shall be given credit against the time served in jail prior to or after conviction. (§46-18-403, MCA)

This puts the onus upon the Department of Corrections to calculate the time served and fails to meet the statutory requirements. While this was likely an oversight by the district court, it must be corrected.

The appropriate remedy is to remand to the district court with instructions to correct the judgment to include 312 days credit for time served. See *Moyer v. Barkell*, 388 Mont. 555, 397 P.3d 456 (2017), citing to *State v. Heafner*, 2010 MT 87, ¶ 11, 356 Mont. 128, 231 P.3d 1087.

CONCLUSION

For the foregoing reasons, Larson asks the Court to reverse and remand for Larson to withdraw his change of plea and proceed to trial; that the Court be given guidance on determining proper restitution in the event he is found guilty at trial;

and the Court be given the proper calculation on credit for time served and be required to include those days in any subsequent Judgment, if any.

DATED this 27th day of May 2025.

PEACE LAW GROUP, LLC

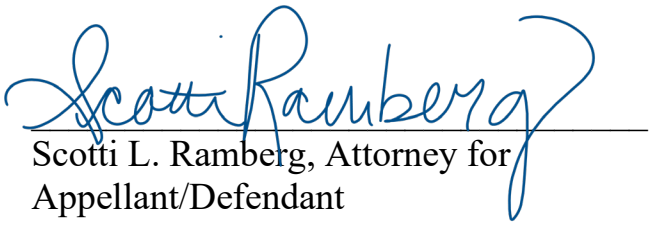
Scotti L. Ramberg, Attorney for
Appellant/Defendant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes, quoted, and indented material; and that the word count calculated by Microsoft Word Professional Edition is 5,840 words, excluding the Cover page, Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

DATED this 27th day of May 2025.

PEACE LAW GROUP, LLC



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APPENDIX

CERTIFICATE OF SERVICE

I, Scotti Ramberg, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 05-27-2025:

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