IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0358

STATE OF MONTANA,

Plaintiff and Appellee,

vs.

THERON SCOTT PLENTYHAWK,

Defendant and Appellant.

BRIEF OF APPELLANT

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

APPEARANCES:

JAMES PARK TAYLOR
Attorney at Law
717 Hiberta Street
Missoula, MT 59804
Jptaylorlaw@gmail.com
(406) 880-6159

ATTORNEY FOR DEFENDANT
AND APPELLANT

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

Joshua A. Racki (Govt Attorney)
Cascade County Attorney
121 4th Street North, Suite 2A
Great Falls MT 59401

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Montana Cases

Montana Statutes

United States Constitutional Provisions

Montana Constitutional Provisions

STATEMENT OF THE ISSUES

1. Whether Appellant's trial counsel provided ineffective assistance of counsel by allowing Appellant to plead guilty to the felony charge of Assault on a Minor, §45-5-212(1), MCA, when the victim did not meet the age requirement of that statute?
2. Whether the District Court could impose sex offender conditions on the suspended portion of Appellant's sentence when the State failed to establish a sufficient nexus to either the offense of Assault on a Minor, or the rehabilitation needs of the Appellant?

STATEMENT OF THE CASE

Appellant was charged on March 24, 2022, in Cascade County with one count of Attempted Sexual Assault, in violation of M.C.A. §§45-5-502 and 45-4-103. The State's allegation was that the victim was 15 years old. DC Doc. 1. Appellant pled not guilty. DC Doc. 10. After multiple continuances, some by the defense, some by the prosecution, and some by the District Court, the parties arrived at a binding plea agreement and a motion was filed by the prosecution requesting a change of plea hearing. DC Doc. 26. A written plea agreement was executed by counsel for both parties and filed with the district court on April 3, 2023. The agreement initially provided that the Appellant would plead guilty to an amended charge of Assault on a Minor, §45-5-212, MCA. DC Doc. 27, 28. The

change of plea hearing was then continued twice, once by the Appellant, and once by the District Court on its own motion. DC Doc. 31, DC Doc. 33. On the day set for the change of plea, June 7, 2023, the Appellant filed an unopposed motion to change the plea agreement to reflect the Appellant would plead *nolo contendere* as allowed by §46-12-204, MCA. The Court granted the motion and amended the agreement. DC Doc. 39. The Appellant pled *nolo contendere* on June 7, 2023, over a Zoom link to the amended charge of §45-5-212(1), MCA, Assault on a Minor, for making "physical contact of an insulting or provoking nature with any individual with a minor." The State did not file a written motion, but instead made an oral motion to amend the Information and, in violation of § 46-11-205(1), MCA, no affidavit was filed to establish the factual basis for the amended charge. Although it is believed the County Attorney prepared a First Amended Information reflecting this charge, the First amended Information was never filed with the District Court. The entirety of the factual basis for the plea was established through the Appellant's plea colloquy. During the plea colloquy Appellant admitted nothing about sexual contact or attempted sexual contact with a minor. Tr. June 7, 2023, pgs. 12-16.

The District Court ordered a presentence investigation and sentencing was set for August 2nd, 2023. DC Doc. 38. The sentencing hearing was continued at the Appellant's request until August 23, 2023. DC Doc. 46. The Appellant failed to

appear for sentencing, and a bench warrant was issued for his arrest. DC Doc. 47, 48. Appellant was arrested on the bench warrant on October 17, 2023. DC Doc. 58. Appellant's sentencing hearing began on January 10, 2024. The State took the position that it was no longer required to follow the binding plea agreement as it was believed the Appellant committed additional crimes in Big Horn County while on bail awaiting sentencing in the case at bar. TR. Jan. 10, 2024, pg. 5-6. Appellant conceded that he had committed a misdemeanor offense in Big Horn County while awaiting sentencing in the case at bar, and that the State was therefore no longer bound by the original plea agreement. TR. Jan. 10, 2024, pg. 8, lines 4-8.

The State recommended that instead of the 5 year suspended sentence originally bargained for, it would recommend 5 years with no time suspended, the maximum sentence for a violation of ¶45-5-212 (1), Assault on a Minor. The State made this recommendation in view of the Appellant's extensive criminal record. TR. Jan. 10, 2024, pg. 6.

Counsel for Appellant asked the Court to follow the original plea bargain, and also asked the Court not to designate Appellant as a sex offender as the presentence investigation recommended in Condition No. 15. TR. Jan. 10, pg. 7, lines 3-15. The State conceded that the Appellant should not have to register as a sex offender. TR. Jan. 10, 2024, pg. 8, lines 20-24.

Appellant also objected to Conditions No. 27-39 of the presentence investigation as being inappropriate for the offense and for Appellant. The State asked that the Court impose the sex offender conditions, conditions 27-39, as part of any suspended time. TR. Jan. 10, 2024, pg. 8-9. The Court asked for a brief on the matter and continued the sentencing hearing until February 22, 2024. Counsel for Appellant briefed the issue. DC Doc. 58. The State did not brief the issue, and the final sentencing hearing occurred on February 22, 2024.

No witnesses testified at either the January 10, 2024 hearing or the February 22, 2024 hearing. The State argued, and the District Court found, that there was a sufficient nexus between Conditions 27-39 and the offense charged, Assault on a Minor, for making "physical contact of an insulting or provoking nature with any individual with a minor." In making the State's argument it did not rely on an affidavit of probable cause in support of the amended charge, as none was filed with the Court. The State did not rely on sworn testimony at the sentencing hearing, as none was offered. It simply relied on the statement of the County Attorney. No psychosexual evaluation of the Appellant was conducted. While it is true that Appellant had an extensive criminal history, he had no history of sex offenses. DC Doc. 42. During Appellant's plea colloquy he made no admissions of sexual conduct (nor were any believed to have been alleged in the First Amended Information), and Appellant did not stipulate to any facts relating to sexual contact

with the victim. Tr. June 7, 2023, pgs. 12-16. Trial counsel for Appellant made a timely and contemporaneous objection to the sex offender conditions, Conditions 27-29, and argued that there was no nexus to either the offense of Assault on a Minor or to the Appellant's rehabilitative needs. The objection was supported by a brief.

The District Court looked to the Affidavit filed in support of the original charge, Attempted Sexual Assault, to justify the nexus to the offense of Assault on a Minor. TR. Feb. 22, 2024, pg. 13. The District Court ruled that the Appellant had stipulated to facts that would include sexual contact with a minor. TR Feb. 22, 2024, pg. 13, lines 2-7. The District Court also found that the victim in the case was 15 years of age. TR Feb. 22, 2024, pg. 6, lines 7-8. According the transcript from the plea colloquy, no such stipulation ever occurred. TR June 7, 2024, pgs. 12-16. Counsel for Appellant made it clear at the sentencing hearing that there was no stipulation concerning sexual conduct. TR. Feb. 22, 2024, pg. 8-10. The sentence of the Court was five years DOC, with two years suspended. During those two years the Court imposed the sex offender conditions, Conditions 27-39. TR. Feb. 22, pg. 25-26, DC Doc. 63. This appeal follows.

STATEMENT OF THE FACTS

Appellant was charged on March 24, 2022, in Cascade County with one count of Attempted Sexual Assault, in violation of M.C.A. §§45-5-502 and 45-4-

103. DC Doc. 1. According to the Affidavit filed in support of the Motion to file the Information, the Appellant tried to lift the shirt of a 15 year old female, after asking her a number of sexual questions. The Affidavit stated in part:

> She told police that she went on a walk alone with Plentyhawk and they went to the garage. Plentyhawk did not want the garage door open. Plentyhawk asked how old she was, asked why she did not like boys, and told her detailed things boys would do her sexually. He then attempted several times to pull her shirt up, but [name redacted] pushed his hands down and told him to stop. She then left the garage. The Victim is 15 years old. Plentyhawk is 50 years old. DC Doc. 1, pg. 4.

According to the Affidavit, the victim's mother came to the victim's aid and began beating on the Appellant. DC Doc. 1, pages 4-5. As noted above, the parties agreed to amend the charge to of Assault on a Minor, a felony, in violation of §45-5-212(1), MCA for making "physical contact of an insulting or provoking nature with any individual with a minor." Although a First Amended Information is referenced during the plea colloquy, that document was never filed by the County Attorney with the District Court. TR June 7, 2023, pg. 9, lines 2-7. DC Doc., pgs. 1-8. A copy of what is believed to be the First Amended Information is attached in the Appendix at page 66 (found in trial counsel's file of Appellant). It is unsurprising that since the First Amended Information was never filed the County Attorney did not file an amended affidavit to support a finding of probable cause, as required by § 46-11-205(1), MCA. The entirety of the plea colloquy as it relates

to the factual basis of the plea to the amended charge of Assault on a Minor is as follows:

DIRECT EXAMINATION BY MS. LETTOW:
Q. All right. [Theron] can you hear me?
A. Yes, ma'am, I can.
Q. All right. Great. So your name is [Theron] Plentyhawk, correct?
A. Yes, it is.
Q. And you are the defendant in this action is that, correct?
A. Yes, ma'am, I am.
Q. All right. So, Mr. Plentyhawk, you're not here in court but I will let you know that Mr. Racki handed me a first amendment information. And so what this document does is it's amending the Count -- Count I to assault on a minor, you understand?
A. Yes, ma'am --
Q. -– okay --
A. -- I do.
Q. And did we discuss the potential penalties for such an offense?
A. Yes.
Q. Okay. You understand the collateral consequences of a guilty plea to assault on a minor.
A. Yes.
Okay. And we discussed the fact that this -- this is a binding plea agreement, you understand.
A. Yes, ma'am.
Q. And the binding plea agreement calls for a fully suspended sentence for a term of 5 years, is that correct?
A. Yes, ma'am.
Q. Okay. So you understand what's going to be expected of you on probation?
A. Yes.
Q. Okay. And you understand that the binding nature of this plea agreement means that if the Court should feel that the plea agreement is inappropriate, the Court could reject the plea agreement and you would be given the opportunity to withdraw this guilty plea, correct?
A. Yes, ma'am --
Q. -– okay --
A. -- I do.

Q. And, actually, Mr. Plentyhawk, we're going to proceed with a no contest plea today due to the fact that you were intoxicated at the time, correct?
A. Yes.
Q. Okay. Now you understand the rights that you waive by pleading no contest today.
20 A. Yes, ma'am, I do.
Q. You understand that a plea of no contest results in a finding of guilt by the Court, correct?
A. Yes…. TR June 7, 2023, pgs. 8-10

MS. LETTOW: All right. I think that satisfies a waiver. I can proceed to the factual basis for the nolo.
THE COURT: Mr. Racki any cross on the rights waiver?
MR. RACKI: No, Your Honor.
THE COURT: Very well. Please continue.
MS. LETTOW: All right.

BY MS. LETTOW:
Q. So Mr. Plentyhawk, I'm just going to ask you some basic questions. But, ultimately, you understand that you are pleading no contest today, correct?
A. Yes.
Q. Okay. So the basis of that one contest plea is as follows, were you on -– were you in Cascade County, Montana, on March the 18, 2022?
A. Yes, ma'am, I was.
Q. K. Specifically, you were at someone's residence at 2022 8th Avenue South in Great Falls.
A. Yeah.
Q. K. And you were under the influence of alcohol at the time, correct?
A. Yes, ma'am, I was.
Q. K. You were highly intoxicated to where you don't recall everything that transpired, is that correct?
A. Yes, I don't remember.
Q. Okay. But should this matter proceed to trial, do you believe that the State could and would likely prove beyond a reasonable doubt that you’re guilty of assault on a minor?
A. Hmmm. How -- how was that, again?
Q. I said, should this matter proceed to trial, do you believe that it's likely that a jury would find you guilty of assault on a minor?

A. Yes.
Q. Okay. There was a little bit of hesitation there are -- are you comfortable proceeding today?
A. Yes, ma'am, I am.
Q. Okay. Do you need more time to talk to me about the questions that I've asked?
A. No.
Q. Okay. Now, the -– the final question I have for you, Mr. Plentyhawk is, do you believe that this plea agreement is in your best interest?
A. I believe so.
MS. LETTOW: All right. I have no other questions.
THE COURT: Mr. Racki do you have any further cross-examination.
MR. RACKI: No questions, Judge.
TR June 7, 2023, pgs.12-15

Based on this colloquy, the District Court concluded on two different occasions that the Appellant had "stipulated that the facts set forth in the affidavit file in support of the Information constitute a sufficient factual basis for the plea." DC Doc. 38, pg. 2; TR Feb. 22, 2024, pg. 13, lines 2-7. That portion of the sentencing transcript reads:

> Hon. John Parker: The manner in which this case was pled was a *nolo contendere* plea, which in this district involves parties stipulating to the facts set forth in the affidavit.

Whatever the general practice in the district might generally be it was not discussed at the time of the plea colloquy. The Appellant made no such stipulation in this case. Appellant expressly disavowed any stipulation about sexual conduct.

> BY MS. LETTOW: Mr. Plentyhawk pled no contest to assault on a minor for offensive touching. He made no allega -- he made no admissions. He made no stipulations as to any sexual contact or any purpose of sexual gratification. So, although the State has alleged all of these things. It's just that, they're allegations.

> What he has admitted to and what he has taken responsibility for and what is he is here to be sentenced on today is assault on a minor for offensive touching. And that offensive touching took place by way of him flicking a girl's shirt. But he absolutely denied, and this was the contention the entire time that there was any attempt to touch, you know, a sensitive private area of the young lady's body.
> TR. Feb. 22, 2024, pg. 8-10

The presentence investigation mirrored the allegations in the initial Information, including that the victim was 15 years old, recommended sex offender conditions, Conditions 27-39 because the probation officer asserted that "the Defendant's crime is sexually motivated." DC Doc. 42, pg. 12. This conclusion was based on the initial charge, and not on the amended charge with the Appellant pled to. Conditions 27-39 are as follows:

> 27. The Defendant shall not have contact with any individual under the age of 18 unless accompanied by an appropriately trained, responsible adult who is aware of the Defendant's sexual conviction and is approved by the Probation & Parole Officer. The Defendant shall sign a "No Contact" contract and abide by all conditions of the contract.
> 28. The Defendant shall not frequent places where children congregate unless accompanied by an appropriately trained, responsible adult who is aware of the Defendant's sexual conviction and is approved by the Probation & Parole Officer. This includes, but is not limited to, schools, parks, playgrounds, malls, movies, fairs, parades, swimming pools, carnivals, arcades, parties, family functions, holiday festivities, or any other place or function where children are present or reasonably expected to be present. The Defendant shall obtain permission from the Officer prior to going to any of the above places.
> 29. The Defendant shall not access or have in his/her possession or under his/her control any material that describes or depicts human nudity, the exploitation of children, consensual sexual acts, non-consensual sexual acts, sexual acts involving force or violence, including but not limited to computer programs, computer links, photographs, drawings, video tapes,

audio tapes, magazines, books, literature, writings, etc., without prior written approval of the Probation & Parole Officer and therapist. The Defendant shall not frequent adult book stores, topless bars, massage parlors, or use the services of prostitutes.

30. The Defendant shall not view television shows or motion pictures geared toward his/her sexual offending cycle, or as a stimulus to arouse deviant thoughts or fantasies (i.e., shows based on sexualization of underage girls or boys, etc.).

31. The Defendant shall not have access to the internet without prior permission from the Probation & Parole Officer and sexual offender therapist, nor can the Defendant have on any computer he/she owns any software that is intended for data elimination, encryption or hiding data. If Internet access is allowed, the Defendant must allow the Department to install rating control software and conduct random searches of the hard drive for pornography or other inappropriate material.

32. The Defendant shall not possess or use any computer or other device with access to any on-line computer service including, but not limited to "Cloud" data storage, without the prior written approval of the Probation & Parole Officer. The Defendant shall allow the Probation & Parole Officer to make unannounced examinations of his/her computer, hardware, and software, which may include the retrieval and copying of all data from his/her computer and computing and data storage devices. The Defendant shall allow the Probation & Parole Officer to install software to restrict the Defendant's computer access or to monitor the Defendant's computer access. The Defendant shall not possess encryption or stenography software. The Defendant shall not utilize software designed to eliminate traces of internet activity. The Defendant shall provide records of all passwords, internet service, and user identifications (both past and present) to the Probation & Parole Officer and immediately report changes. The defendant shall sign releases to allow the Probation & Parole Officer to access phone, wireless, internet, and utility records.

33. The Defendant shall not be involved in any type of employment, service or recreational pursuit which involves the supervision of children. Under no circumstances should the Defendant be in a position of power and authority over children.

34. The Defendant shall be subject to reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses. [§46-18-255(1), MCA]

35. The Defendant's residence, changes and any co-habitants must have prior approval of the Probation & Parole Officer. The Defendant shall not reside in a residence where there are any children under the age of 18 without the written approval of the therapist and the Officer.
36. The Defendant shall not access "900" number telephone sex lines and shall have a "900" number block on his/her telephone.
37. The Defendant shall not have a cell phone, or such other technology/device with photo, video, or Internet capabilities.
38. If cell phone use is allowed, all bills and records shall be made available to the Probation & Parole Officer.
39. The Defendant shall not date, live with, or otherwise be aligned with any person with children under the age of 18 without the express prior approval of the therapist and Probation & Parole Officer. If this approval is granted, they shall both be involved with the Defendant's treatment to the extent recommended by the treatment provider.

Finally, no motion was made at the trial court level to challenge the conviction for Assault on a Minor, or to ask that Appellant be allowed to with his plea to that charge.

STANDARD OF REVIEW

This Court reviews claims of ineffective assistance of counsel *de novo*. *State v. Foster*, 2025 MT 132, ¶10.

Even if the Court chooses not to review the claim of ineffective assistance of counsel, this Court must conduct plain error review and allow him to withdraw his plea of *nolo contendere* to the charge of Assault on a Minor, even in the absence of a motion to withdraw his plea. Plain error review is required to prevent a miscarriage of justice.

> This Court will use its inherent power of common law plain error review sparingly, on a case-by-case basis, only in those cases that implicate a criminal defendant's fundamental constitutional rights, where failing to review the claimed error at issue may result in a manifest miscarriage of justice, may leave unsettled the question of the fundamental fairness of the trial or proceedings, or may compromise the integrity of the judicial process. *State v. Holt*, 2006 MT 151, ¶22, 332 Mont. 426, 432, 139 P.3d 819, 824.

On the issue of the conditions attached to the suspended portion of Appellant's sentence, this Court reviews a sentence in a criminal case first for legality as District Courts may only impose sentences authorized by statute. "We review a sentence in a criminal case for legality, in order to determine whether it is within statutory parameters." *State v. Burch*, 2008 MT 118, ¶12, 342 Mont. 499, 503, 182 P.3d 66, 70. In reviewing conditions for suspended or deferred sentences, the Court then reviews the reasonableness of the conditions for an abuse of discretion. *State v. Ashby*, 2008 MT 83, ¶9, 342 Mont. 187, 190-191, 179 P.3d 1164, 1166. In the conducting the reasonableness review, this Court in *Ashby* mandated that a condition of a suspended sentence must have a sufficient nexus to either the offense itself, or to the individual characteristics of the defendant. *State v. Ashby*, 2008 MT 83, ¶7, 342 Mont. 187, 190, 179 P.3d 1164, 1166.

The one exception to the *Ashby* nexus requirement is if the condition is one expressly authorized by either statute or administrative rule. *State v. Welch*, 2024 MT 42, ¶34, 415 Mont. 343, 354, 544 P.3d 225, 234. The *Welch* exception does not apply in this case.

SUMMARY OF THE ARGUMENT

Counsel for Appellant was ineffective by allowing Appellant to plead no contest when it was legally impossible for Appellant to commit the offense of Assault on a Minor under the facts of the case. The State asserted, and the District Court found, that the victim was 15 years of age. In order to plead sufficient facts to convict the Appellant of the felony offense of Assault of a Minor, §45-5-212(1), MCA requires that the victim be under 14 years of age. Allowing the Appellant to plead to this offense as a felony was ineffective assistance of counsel.

In the alternative, the Court must at least review the Appellant's conviction under the plain error standard and allow the Appellant to withdraw his plea, although no motion to withdraw the plea was made at the trial level. Fundamental rights of the Appellant were violated, and it would be a gross miscarriage of justice to allow this plea to stand given that the defense counsel, the prosecutor, the probation officer, and the presiding judge all ignored or overlooked the crucial fact of the victim's age, in violation of §45-5-212(1), MCA.

Finally, even if the plea bargain and conviction were to be upheld, something which Appellant does not concede, there was an insufficient nexus for the Court to impose sex offender conditions on the two-year suspended portion of Appellant's sentence. There must be a nexus either to the offense itself, or to the Appellant. The

conditions imposed on the suspended portion of Appellant's sentence did not meet either nexus requirement.

As to the offense itself, the following facts are uncontested:

1. Assault on a minor is not classified as a sexual offense under §46-23-502, MCA. The State stipulated that the Appellant did not have to register as a sex offender. TR. Jan. 10, 2024, pg. 8, lines 20-24

2. The State failed to file the First Amended Information and failed to file an Affidavit in Support of the First Amended Information in violation of § 46-11-205(1). Consequently, when the Appellant pled *nolo contendere* to Assault on a Minor there were no facts of a sexual nature he agreed the State could likely prove.

3. The purported language of what is believed to be the First Amended Information does not contain any reference to sexual conduct or sexual motive.

4. The District Court improperly concluded Appellant had stipulated to the facts in the Affidavit file in support of the original charge of Attempted Sexual Assault. No such stipulation occurred.

5. No sworn testimony was offered at sentencing to connect the offense of Assault on a Minor to any sexual conduct. No psychosexual offender evaluation was performed on the Appellant.

6. Appellant made a contemporaneous and sufficient objection to Conditions 27-39 imposed by the Court.

As to the Appellant's individual characteristics there are two critical facts.

1. Although the Appellant has a significant criminal history, he has no history of sexual offenses.

2. Neither the State nor the District Court requested that the Appellant undergo a sex offender evaluation to establish the necessity of sex offender conditions for the Appellant.

ARGUMENT

1. ***It was ineffective assistance of counsel for Appellant's attorney to allow him to plead to Assault on a Minor when it was legally impossible to commit the crime given the age of the victim. The plea agreement is an illegal and unenforceable agreement. At a minimum there was a mutual mistake of fact that requires setting the plea agreement aside.***

It was ineffective assistance of counsel for Appellant's attorney to allow him to plead *nolo contendere* to the offense of Assault on a Minor when the facts did not and could not support such a plea. The victim, 15 years of age, did not meet the minimum age requirement (under 14) required by §45-5-212 (1), MCA, which provides:

> **45-5-212 Assault on minor.**
> (1) A person commits the offense of assault on a minor if the person commits an offense under 45-5-201, and at the time of the offense*, the victim is under 14 years of age* and the offender is 18 years of age or older.
> (2) (a) Except as provided in subsection (2)(b) or (2)(c), a person convicted of assault on a minor shall be imprisoned in a state prison for a term not to exceed 5 years or be fined not more than $ 50,000, or both. (emphasis added)

As noted above, the County Attorney did not file the First Amended Information charging Assault on a Minor, nor did he prepare or file an Affidavit in support of the First Amended Information, as required by §46-11-205(1), MCA.

> (1) The court may allow an information to be amended in matters of substance at any time, but not less than 5 days before trial, provided that a motion is filed in a timely manner, states the nature of the proposed amendment, **and is accompanied by an affidavit stating facts that show the existence of probable cause to support the charge as amended.** A copy of the proposed amended information must be included with the motion to amend the information.
> § 46-11-205(1), MCA, (*emphasis added*)

This Court utilizes the *Strickland* standard when reviewing ineffective assistance of counsel claims. *Bone v. State*, 284 Mont. 293, 304, 944 P.2d 734, 740 (1997), citing *Strickland v. Washington*, 466 U.S. 668, 669 (1984). This Court reviews claims of ineffective assistance of counsel *de novo*. *State v. Foster*, 2025 MT 132, ¶10, *State v. Bryson*, 2024 MT 315, ¶ 23, 419 Mont. 490, 560 P.3d 1270.

Under the *Strickland* standard the Appellant must show his attorney failed to act within the range of competence demanded of attorneys in criminal cases, and that his attorney's conduct must have so undermined the proper functioning of the adversarial process that the result produced was not just. *Strickland v. Washington*, 466 U.S. 668, 669 (1984). A defendant alleging ineffective assistance of counsel must demonstrate that there is a reasonable probability that, but for his counsel's unprofessional errors, the result of his proceeding would have been different. *State v. Dawson*, 2000 MT 219, ¶ 20, 301 Mont. 135, 10 P.3d 49.

It is beyond question that if Appellant's counsel had pointed out the age of the victim to the Court the result would have been different. §45-5-212(1), MCA

does not allow a conviction unless the victim is under 14 years of age and the perpetrator is 18 or over. In the case at bar the victim was 15 according to the initial Information and supporting Affidavit, according to the presentence investigation, and as found by the District Court.

A claim of ineffective assistance of counsel must be based on facts in the record and not merely on conclusory allegations. *Vernon Kills On Top v. State*, 279 Mont. 384, 396, 928 P.2d 182, 189-90 (1996). Appellant's claim is based on the uncontested facts of the case. Counsel for Appellant overlooked the statutory requirement about a victim's age under §45-5-212(1), MCA, as did the prosecutor, the probation officer, and the presiding judge.

To allow this conviction to stand would be a miscarriage of justice and would compromise the integrity of the judicial system, which cannot be allowed. *State v. Holt*, 2006 MT 151, ¶22, 332 Mont. 426, 432, 139 P.3d 819, 824.

§46-12-212, MCA was enacted to prevent exactly what transpired in this case. It requires the District Court to ensure that there is a factual basis for a plea of either guilty or *nolo contendere*.

> **46-12-212 Determining accuracy of plea**.
> (1) The court may not accept a guilty plea without determining that there is a factual basis for the plea in charges of felonies or misdemeanors resulting in incarceration.
> (2) *A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty or may, with the consent of the court and the prosecutor, enter a plea of nolo*

contendere to the offense if the defendant considers the plea to be in the defendant's best interest **and the court determines that there is a factual basis for the plea**.
(Emphasis added)

In the case at bar there was no Affidavit filed in support of the First Amended Information, so there are no factual allegations from that Affidavit that could be relied on by the District Court. The only Affidavit filed with the District Court was in support of the original Information, and that Affidavit alleged that the victim was 15 years of age. Nothing in the record provides a factual basis to support a charge of Assault on a Minor under §45-5-212 (1), MCA.

The parties cannot agree to a plea bargain that is not factually based, any more than the parties could have someone plead *nolo contendere* to a homicide charge when it was acknowledged that the victim did not die. Such an agreement is illegal and unenforceable. A contract is unlawful if it is "contrary to an express provision of law." §28-2-701(1), MCA. If a contract has several distinct objects, and at least one object is lawful and one is unlawful, then "the contract is void as to the latter and valid as to the rest." §28-2-604, MCA. *State v. Cleveland*, 2014 MT 305, ¶18, 377 Mont. 97, 101, 338 P.3d 606, 609. In the case at bar the parties agreed that the Appellant would plead *nolo contendere* to Assault on a Minor even though the uncontested facts of the case could not possibly support such a conviction. The plea agreement was unlawful and unenforceable. Counsel could

not make a strategic decision to have Appellant plead *nolo contendere* to an offense that did not occur.

Under any view of the facts of the case at least a mutual mistake of fact was present that would allow Appellant to withdraw from the plea agreement. *State v. Little Coyote*, 2023 MT 243, 414 Mont. 299, 539 P.3d 1142.

2. Even using plain error review, this Court must allow the Appellant to withdraw his plea of nolo contendere to the charge of Assault on a Minor

This Court uses its inherent power of common law plain error review sparingly, and on a case-by-case basis. It is appropriate only in those cases that implicate a criminal defendant's fundamental constitutional rights, and where failing to review the claimed error at issue may result in a manifest miscarriage of justice, may leave unsettled the question of the fundamental fairness of the trial or proceedings, or may compromise the integrity of the judicial process. *State v. Holt*, 2006 MT 151, ¶22, 332 Mont. 426, 432, 139 P.3d 819, 824. This Court has found that fundamental rights are involved when defendants enter into plea agreements and have "a substantive right to be treated fairly throughout the plea bargain process." *State v. Brady*, 2025 MT 105, ¶16, 422 Mont. 23, 31; *State v. Collins*, 2023 MT 78, ¶ 5, 412 Mont. 77, 528 P.3d 1106; *State v. Allen*, 199 Mont. 204, 208-09, 645 P.2d 380, 382 (1981), and *Santobello v. New York*, 404 U.S. 257, 262, 92 S. Ct. 495, 498-99, 30 L. Ed. 2d 427 (1971).

The uncontested facts of this case mandate at a minimum plain error review. Those facts are:

- Appellant was convicted of an offense that was legally impossible. §45-5-212(1), MCA, requires that the victim be less than 14 years of age. According to the initial Information and supporting Affidavit, the victim in this case was 15 years of age at the time of the offense. DC Doc. 1. The Presentence investigation stated that the victim was 15 years of age. DC Doc. 42, pg. 4. The sentencing judge found that the victim was 15 years of age. TR Feb. 22, 2024, pg. 6, lines 7-8.
- Appellant was convicted on the basis of the First Amended Information that was never filed with the District Court.
- No Affidavit in Support of the First Amended Information was ever created, much less filed with the District Court
- At the time of the plea colloquy the presiding judge failed to establish a factual basis for the plea in violation of §46-12-212, MCA, likely due to the failure of the County Attorney to file the First Amended Information and the Affidavit in Support of that information, which itself violated §46-11-205(1), MCA

- At the time of the plea colloquy all the known information about the victim was that she was 15 years old. No contrary information about the victim's age appears in the record.
- All parties to this proceeding were aware that the victim was 15 years of age, yet the presiding judge, the prosecutor, the probation officer, and the defense counsel, all ignored this fact and improperly allowed Appellant's plea to go forward.

Whether through inadvertence or design, the parties cannot allow an individual to be convicted of a crime when a critical element of the offense is not present. Fundamental rights of the defendant to due process under the Fourteenth Amendment to the United States Constitution, U.S. Const., amend. IV, and under Mont. Const., Art. II, Sec. 17, are implicated in the plea bargaining process. Even under the plain error standard the Appellant's conviction cannot stand. While it is true that no motion to challenge the conviction was made at the trial court level and no motion was made to withdraw Appellant's *nolo contendere* plea, the conviction must be vacated and Appellant must be allowed to withdraw his plea to prevent a fundamental miscarriage of justice.

3. ***There was an insufficient nexus to justify the imposition of sex offender Conditions 27-39 as detailed in the presentence investigation. State v. Ashby requires there be a nexus either to the offense itself or to the Appellant's individual characteristics***

A. No Nexus to the offense or the rehabilitative needs of Appellant

One of the first cases to discuss the propriety of imposing sex offender conditions on a defendant was *State v. Black*, 245 Mont. 39, 798 P.2d 530 (Mont. 1990). In *Black* the defendant was charged with Incest, but on the date of trial the charge was amended to Assault. In reviewing the factual basis for the plea in *Black*, this Court held:

> The factual basis for the amended charge was that Black had physically and mentally injured his daughter in the course of soliciting her for sex and engaging her in lengthy discussions regarding sexual matters. After lengthy interrogation by the court, defendant's plea of guilty to the amended charge was accepted, and, pursuant to the plea agreement, defendant was sentenced to five years in the Montana State Prison, subject to the condition that he enroll in and complete the sexual offender's treatment program at the prison.
> *State v. Black*, 245 Mont. 39, 42, 798 P.2d 530, 532 (Mont. 1990)

During the plea colloquy Black acknowledged that he would have to undergo sex offender treatment while in prison. The Court ruled that under the sentencing statutes then in effect, the sex offender requirements were appropriate in the case.

> In this case, the District Court properly included within defendant's sentence the condition that defendant complete a sexual offender's course while incarcerated. Defendant was convicted of assault upon his fourteen year old daughter. There is ample support in the record, based upon the examination of defendant at the plea hearing, that the assault

> took the form of both bodily injury and invitations or solicitations concerning sexual intercourse which resulted in mental and emotional impairment to the daughter. The sexual nature of the assault established a significant connection between the crime and the need for defendant to attend the sexual offender's program. In order to protect society and to promote rehabilitation of the defendant, the District Court properly determined that defendant needed to attend the sexual offender's program.
> *State v. Black*, 245 Mont. 39, 46-47, 798 P.2d 530, 534-535 (Mont. 1990)

Unlike the facts in *Black*, in the case at bar there are no facts were established showing a sexual motive or sexual conduct for Appellant in the plea colloquy, or in the First Amended Information, a document that was never filed with the District Court.

In *State v. Ommundson*, 1999 MT 16, 293 Mont. 133, 974 P.2d 620, the defendant pled guilty to felony DUI. At sentencing the District Court ordered that the defendant complete sex offender treatment and have no unsupervised contact with minors (because of Ommundson's prior criminal history). This Court held:

> In the instant case, the District Court was authorized to impose conditions designed to rehabilitate Ommundson's drinking and driving and to protect society from future manifestations of such conduct. However, there is no evidence in this case that indecent exposure leads to increased occurrences of DUI, nor any evidence that treatment for indecent exposure will reduce the recurrence of alcohol abuse or lessen the incidence of DUI in society at large. In the present case, therefore, there simply is no nexus between the requirement that Ommundson participate in a sex offender program and the charged offense of DUI. The condition of Ommundson's sentence is not reasonably related to the rehabilitation of a DUI offender nor to the protection of society from drunk drivers.

State v. Ommundson, 1999 MT 16, ¶12, 293 Mont. 133, 138-139, 974 P.2d 620, 623

The ruling in *Ommundson* was expanded in *State v. Ashby*, 2008 MT 83, ¶7, 342 Mont. 187, 190, 179 P.3d 1164, 1166. As previously noted, *Ashby* requires that there be a nexus for sentencing conditions either to the offense charged, or to the defendant himself. If the nexus is not to the offense itself, but is specific to the offender, then there are additional criteria that must be met.

> We caution, however, that courts may impose offender-related conditions only in those cases in which the history or pattern of conduct to be restricted is recent, and significant or chronic. A passing, isolated, or stale instance of behavior or conduct will be insufficient to support a restrictive probation condition imposed in the name of offender rehabilitation.
> *State v. Ashby*, 2008 MT 83, ¶15, 342 Mont. 187, 193, 179 P.3d 1164, 1167-1168.

In the case at bar Appellant's trial counsel argued that the sex offender conditions, Conditions 27-39, were not related to the offense and did not show a history or pattern of conduct. TR Jan. 10, 2024, pg. 7, DC Doc. 58, TR Feb. 22, 2024, pgs. 7-10. In *Ashby* the defendant had a history of alcohol abuse, but the offense for which he was convicted, Bad Checks, did not involve the use of alcohol and there was no basis on which to impose drug or alcohol conditions on Ashby which serving a probationary sentence.

In *State v. Zimmerman*, 2010 MT 44, 355 Mont. 286, 228 P.3d 1109, the defendant was convicted of maintaining a public nuisance. The defendant

Zimmerman lived in Great Falls, and kept a second home in Dutton. At his Dutton home he kept three kittens, two cats, and a dog. He would drive to Dutton each day to feed his pets, at which time he also fed a large number of feral cats (a clowder of them). He was given a deferred sentence on his public nuisance conviction and one of the conditions of his deferred sentence was that he not keep pets at the Dutton house. This Court ruled in *Zimmerman* that the District Court could impose conditions under §46-18-201, MCA, on a deferred or suspended sentence, but citing *State v. Ashby*, 2008 MT 83, 342 Mont. 187, 179 P.3d 1164, also ruled that:

> Conditions imposed by a district court must relate to rehabilitation or protection of society within the particular context of an offender's crime or the unique background, characteristics, or conduct of the defender. *State v. Zimmerman*, 2010 MT 44, ¶17, 355 Mont. 286, 290-291, 228 P.3d 1109, 1112

The Court in *Zimmerman* looked to find the *Ashby* nexus and found it in the trial testimony of the prosecution's witnesses. This Court relied on the trial testimony of Deputy Sheriff Clint Ellsworth, and others, to show that there was a connection between Zimmerman feeding his own animals in Dutton and feeding the feral cats there. *Zimmerman* does not support the District Court's ruling in this matter, as the nexus in *Zimmerman* was provided by trial testimony. No testimony was offered at sentencing in this case.

In *State v. Melton*, 2012 MT 84, 364 Mont. 482, 276 P.3d 900, the defendant had a prior conviction for sex with an underage female. He was convicted in Montana with failing to register as a sex offender and the State sought to put sex offender conditions on suspended portions of his Montana sentence. The *Melton* Court reviewed the general sentencing authority of the District Courts, and the limitations of that authority.

> A sentencing judge's discretion under § 46-18-202(1), MCA, is "broad," and our review is correspondingly "deferential." *State v. Zimmerman*, 2010 MT 44, ¶ 17, 355 Mont. 286, 228 P.3d 1109. As a general rule, we will affirm a restriction or condition imposed pursuant to this statutory authority so long as the restriction or condition has some correlation or connection—i.e., nexus—to the underlying offense or to the offender himself or herself. *Ashby*, ¶¶ 13-15; *Zimmerman*, ¶ 17. At the same time, however, we have explained that a sentencing judge's discretion "is not without limit" and that deferential review does not mean "no review at all." *Zimmerman*, ¶ 17 (internal quotation marks omitted). If the restriction or condition at issue is "overly broad or unduly punitive," or if the required nexus is "absent or exceedingly tenuous," we will reverse. *Zimmerman*, ¶ 17; see also e.g. *State v. Muhammad*, 2002 MT 47, ¶ 28, 309 Mont. 1, 43 P.3d 318 (concluding that the banishment condition was unnecessarily broad and severe); *State v. Herd*, 2004 MT 85, ¶¶ 24-25, 320 Mont. 490, 87 P.3d 1017 (concluding that the 40-year driving prohibition was unreasonable in terms of its harshness and duration); cf. *United States v. Doe*, 79 F.3d 1309, 1319 (2d Cir. 1996) ("While a sentencing court has broad discretion in fixing conditions of probation, and we therefore review a sentence of probation under an abuse-of-discretion standard, we carefully scrutinize unusual and severe conditions, such as one requiring the defendant to give up a lawful livelihood." (internal quotation marks omitted)); *United States v. Davis*, 452 F.3d 991, 995 (8th Cir. 2006) ("Where a condition of supervised release would impose sweeping restrictions on important constitutional rights, we review the condition more closely." (internal quotation marks omitted)).

State v. Melton, 2012 MT 84, P18, 364 Mont. 482, 488, 276 P.3d 900, 905

The Court found that there was some nexus to Melton's registration offense, but also clearly found a nexus to the offender himself based on his failure to previously complete treatment and the psychosexual evaluation conducted in Montana. *State v. Melton*, 2012 MT 84, P22, 364 Mont. 482, 490, 276 P.3d 900, 906.

Given this case law it is apparent for a number of reasons that there was no nexus between the sex offender conditions, Conditions 27-39, and the offense of Assault on a Minor.

i. Assault on a Minor is not classified as a sexual offense under §46-23-502, MCA

§46-23-502, MCA defines the term "sexual offense" under Montana law. The list is extensive and includes sixteen enumerated offenses. §45-5-212, MCA, Assault on a Minor, is not one of those enumerated offenses. The State stipulated that the Appellant did not have to register as a sex offender. TR. Jan. 10, 2024, pg. 8, lines 20-24

ii. The State failed to file the First Amended Information and failed to even draft an Affidavit in Support of the First Amended Information in violation of § 46-11-205(1). Consequently, when the Appellant pled nolo contendere to Assault on a Minor there were no facts of a sexual nature he acknowledged the State could likely prove.

§ 46-11-205(1), MCA provides:

> (1)The court may allow an information to be amended in matters of substance at any time, but not less than 5 days before trial, provided that a motion is filed in a timely manner, states the nature of the proposed amendment, **and is accompanied by an affidavit stating facts that show the existence of probable cause to support the charge as amended.** A copy of the proposed amended information must be included with the motion to amend the information.
> *(emphasis added)*

In the case at bar the State appears to have provided trial counsel for Appellant with a document entitled First Amended Information (it is referred to in the June 7, 2023, plea colloquy, TR June 7, 2023, pgs. 4, 9). A document by that name was in the file for counsel for Appellant and is attached in the Appendix at page 66.

There is no reference in the record to an Affidavit in Support of the First Amended Information even existing. The District Court docket does not show either the First Amended Information or an Affidavit in Support of the First Amended Information. In the absence of an Affidavit in Support of the First Amended Information, the Court was left without facts of a sexual nature to connect this offense to Conditions 27-39 of the presentence investigation. As noted above, the Appellant explicitly disavowed any sexual conduct in connection with the offense he was charged with. TR Jan. 10, 2024, pgs. 7-8, TR. Feb. 22, 2024, pgs. 7-10.

iii. The purported language of what is believed to be the First Amended Information does not contain any reference to sexual conduct or sexual motive.

The charging language of the purported First Amended Information makes no mention of sexual conduct by the Appellant, nor does it mention the age of the victim, a charging requirement under §45-5-212(1), MCA, Assault on a Minor. Appellant believes that the relevant portion of that document provides:

> COUNT I: ASSAULT ON MINOR, a Felony, a violation of M.C.A. S 45-5-212. The above-named Defendant purposefully or knowingly made physical contact of an insulting or provoking nature with any individual with a minor.

Counsel for Appellant cannot definitively state that this is the language of the First Amended Information as the document was never filed with the District Court.

iv. The District Court improperly concluded Appellant had stipulated to the facts in the Affidavit filed in support of the original charge of Attempted Sexual Assault. No such stipulation occurred.

The District Court improperly concluded Appellant had stipulated to the facts in the Affidavit filed in support of the original charge of Attempted Sexual Assault. TR Feb. 22, 2024, pg. 13, lines 2-7.

> Hon. John Parker: The manner in which this case was pled was a *nolo contendere* plea, which in this district involves parties stipulating to the facts set forth in the affidavit.

If in fact this is the practice in the Eighth Judicial District it not something provided for by the District Court rules of the Eighth Judicial District (see Eighth Judicial District Rules at https://courts.mt.gov/courts/rules/District). More

importantly it was not what transpired in this case. According to the transcript from the plea colloquy, no stipulation about facts relating to sexual motive or conduct occurred. TR June 7, 2023, pgs. 12-16. Even assuming the document found in Appendix, pg. 66, is an accurate copy of the First Amended Information the County Attorney meant to file, it was never filed. No Affidavit in Support of the First Amended Information was ever filed. Counsel for Appellant made it clear at the sentencing hearing that there was no stipulation concerning sexual conduct. TR. Feb. 22, 2024, pg. 8-10. The District Court could not rely on a "practice" of the District Court when no Affidavit in Support of the First Amended Information was ever prepared or filed, where no such stipulation appears in the record, and trial counsel for Appellant had expressly disavowed any stipulation about any sexual conduct by Appellant.

v. No sworn testimony was offered at sentencing to connect the offense of Assault on a Minor to any sexual conduct. No psychosexual offender evaluation was performed on the Appellant.

The District Court appeared to rely on *State v. Zimmerman*, 2010 MT 44, 355 Mont. 286, 228 P.3d 1109, in deciding that it could impose the sex offender conditions, Conditions 27-39, on the suspended portion of Appellant's sentence. That reliance was misplaced as *Zimmerman* is inapposite to the case at bar. The Court in *Zimmerman* relied on sworn testimony to establish the necessary nexus. As noted above, in Appellant's case there was no Affidavit filed in Support of the

First Amended Information. There was no stipulation by Appellant about sexual conduct. The State could have offered sworn testimony at the sentencing hearing to try and create a nexus justifying imposition of sex offender conditions but it chose not to. It simply relied on the statements of the County Attorney and the allegations found in the Affidavit filed in Support of the initial Information charging Attempted Sexual Assault, and not the amended charge to which he pled *nolo contendere*. There were no facts on the record that justified the *Ashby* nexus test for sex offender conditions.

Another way the State could have established a nexus that would justify the imposition of sex offender conditions would have been to conduct a psychosexual evaluation of the Appellant, as occurred in *State v. Melton*, 2012 MT 84, 364 Mont. 482, 276 P.3d 900. This could have demonstrated whether there were individual characteristics of the Appellant that would have justified Conditions 27-39 related to sexual conduct. The State chose instead not to have a psychosexual evaluation conducted. Even if a psychosexual evaluation takes place blanket denial of internet connectivity without probation approval (based on conditions virtually identical to Conditions 31, 32, and 37 imposed on Appellant in this case) has been looked on with disapproval by this Court and modified as being improperly overbroad.

> In their current incarnation, the challenged conditions fail to consider the multiple legitimate purposes for internet usage. Notably,

> Conditions 35, 36, and 42 may impair Johnson's ability to comply with the other terms of his probation. Johnson's sentencing conditions include a requirement that he "must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer." As Johnson correctly notes, effectively applying for employment in this day and age generally requires internet use to search for open positions, conduct research on those positions, download templates to complete application materials, and submit online applications. As written, Conditions 35, 36, and 42 would frustrate this process. Given the increasingly hybrid and connected nature of work, these restrictions may also impact Johnson's ability to attend meetings and communicate with employers, co-workers, instructors, and classmates, where appropriate.
> *State v. Johnson*, 2023 MT 143, P13, 413 Mont. 114, 120, 533 P.3d 335, 340

vi. Appellant made a contemporaneous and sufficient objection to Conditions 27-39 imposed by the Court.

This Court generally requires that a contemporaneous objection be made in order to have the matter reviewed on appeal. *State v. Youpee*, 2018 MT 102, ¶11, 391 Mont. 246, 249, 416 P.3d 1050, 1052; *State v. Pajnich*, 2025 MT 101, ¶9, 422 Mont. 12, 15, 568 P.3d 562. This is especially true in the case of court-imposed probation conditions if the conditions are objected to at sentencing. *State v. Hernandez*, 2009 MT 341, ¶3, 353 Mont. 111, 112, 220 P.3d 25, 27. In the case at bar, Counsel for Appellant made numerous and sufficient contemporaneous objections to the imposition of sex offender conditions. When the presentence investigation first requested the imposition of the conditions, Appellant's trial counsel objected on the basis of *State v. Ashby*, supra, arguing there was no nexus to the offense Appellant pled to, and no sufficient nexus to the Appellant himself.

TR Jan. 10, 2024, pgs. 7-8. The Court ordered briefs on the issue, and Appellant's trial counsel provided a brief. DC Doc. 58. The State filed no brief. At the continued sentencing hearing in February of 2024, trial counsel for Appellant renewed her objections to the sex offender conditions. TR. Feb. 22, 2024, pgs. 7-10. A sufficient contemporaneous objection was made for this Court to conduct a review of the appropriateness of the sex offender conditions under *State v. Ashby*.

CONCLUSION

Whether reviewed *de novo* under the claim of ineffective assistance of counsel, or under the plain error standard, the result in this case is the same. It was legally impossible for the Appellant to commit the offense of Assault on a Minor given the age of the victim. The statute simply does not allow for it. The errors in the case committed by defense counsel, the prosecution, the probation officer, and the district court compounded each other, leading to the conviction of the Appellant for a felony charge that was never even properly filed. The conviction must be vacated and returned to the District Court so that the Appellant can withdraw his plea of *nolo contendere*.

Even if somehow the Appellant's conviction were to be affirmed, something Appellant does not concede, the sex offender conditions imposed as Conditions 27-39 must be stricken as there is no nexus either to the offense of Assault on a Minor or to the rehabilitative needs of the Appellant.

Respectfully submitted this 3rd day of July, 2025.

James Park Taylor
Attorney at Law
717 Hiberta Street
Missoula, MT 5980

By: /s/ James Park Taylor
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Time 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 9266, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ James Park Taylor
JAMES PARK TAYLOR

CERTIFICATE OF SERVICE

I, James Park Taylor, hereby certify that I have served true and accurate copies of the foregoing Brief of Appellant and the attached Appendix to the following on July 3, 2025:

Austin Miles Knudsen
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

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

CERTIFICATE OF SERVICE

I, James Park Taylor, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 07-03-2025:

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

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

Tammy Ann Hinderman (Attorney)
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena MT 59620
Representing: Theron Scott Plentyhawk
Service Method: eService

Electronically Signed By: James Park Taylor
Dated: 07-03-2025