IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA 24-0482

STATE OF MONTANA,

Plaintiff and Appellee,

vs.

MARK ANDREW PARTRIDGE,

Defendant and Appellant.

APPELLANT'S OPENING BRIEF

On Appeal from the Thirteenth Judicial District Court,
Yellowstone County, Honorable Colette Davies, Presiding

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STATEMENT OF THE ISSUES

1. Did the district court violate the state and federal Ex Post Facto Clauses by sentencing Partridge under the 2019 amendment to Mont. Code Ann. § 45-5-503(4)(a)(i), which became effective after the offense and increased the mandatory minimum parole restriction from 10 to 25 years?
2. Did trial counsel render ineffective assistance by failing to object to application of the 2019 penalty enhancement, thereby allowing an unlawful 25-year minimum sentence and parole restriction to be imposed?
3. Was Partridge's guilty plea involuntary because he was affirmatively misadvised that a 25-year mandatory sentence and parole restriction applied when the correct statute required only 10 years?
4. Is the plea agreement void and unenforceable because it was expressly conditioned on an illegal sentence?

STATEMENT OF THE CASE

Appellant Mark Allen Partridge ("Partridge") appeals the judgment of the Thirteenth Judicial District Court, Yellowstone County,

sentencing him to 100 years in the Montana State Prison ("MSP"), with 40 years suspended and a 25-year parole restriction, for the offense of sexual intercourse without consent (SIWOC) by accountability, in violation of Mont. Code Ann. § 45-5-503(4)(a)(i) (2019). See Judgment (Doc. 33), attached as Appendix A.

The State charged Partridge with committing SIWOC between April and September 2019. (Docs. 9 at 2; 10 at 1.) Because the victim was under the age of 12, the State sought a sentencing enhancement under § 45-5-503(4)(a)(i). (Doc. 10 at 2.) However, the State erroneously relied on the 2019 version of the statute, which did not take effect until October 1, 2019 – after the charged conduct had ended.

The 2017 version of § 45-5-503(4)(a)(i), which was in effect when the offense occurred, mandated a 100-year sentence but prohibited parole, deferral, or suspension only for the first 10 years. The 2019 amendment increased the same prohibitions to 25 years.

This error went uncorrected throughout the proceedings. Partridge was misadvised about the applicable penalty; defense counsel failed to raise an ex post facto objection and negotiated the plea agreement based on an invalid sentencing scheme; and the district

court ultimately sentenced Partridge under the 2019 statute, stating it was "bound" by the 25-year restriction. (05/20/2024 Sentencing Transcript ("SENT. Tr.") at 38:24–39:4.)

Partridge timely appealed. (S.C. Doc. 1.) He now asserts that his sentence is illegal, his plea was involuntary, his counsel was ineffective, and the plea agreement is unenforceable.

STATEMENT OF THE FACTS

The Charges and Penalty Enhancement

On June 28, 2023, the State charged Partridge with sexual abuse of children for sending child pornography to an undercover agent between June 24–27, 2023. (Docs. 1, 2.) Following a search of Partridge's phone, the State amended the charges to include one count of SIWOC by accountability and three counts of sexual abuse of children. (Docs. 9, 10.)

The SIWOC offense alleged that between April and September 2019, Partridge facilitated his partner in the sexual abuse of their 4-year-old child. (Doc. 10 at 1–2.) The State sought an enhanced penalty because of the victim's age, as follows:

> In compliance with Section 46-1-401, Montana Code Annotated, the State gives notice of its intent to seek a penalty enhancement

> under Section 45-5-503(4)(a), Montana Code Annotated, whereby the Defendant shall be punished by imprisonment in the state prison for a term of 100 years, of which the first 25 years may not be suspended or deferred, and during the first 25 years the Defendant will not be eligible for parole.
>
> (Doc. 10 at 2.)

This language mirrored the 2019 version of § 45-5-503(4)(a)(i), which became effective on October 1, 2019 – after Partridge committed the SIWOC offense between April and September 2019.

2017 vs. 2019 Versions of the Statute

Mont. Code Ann. § 45-5-503(4)(a)(i) (2017) was in effect from July 1, 2017, through September 30, 2019. *See* HB 133, 2017 Mont. Laws, ch. 321, § 6. It mandated a 100-year sentence for SIWOC against a child under 12 but prohibited parole, deferral, or suspension only for the first 10 years. *Id*.

Senate Bill 155, effective October 1, 2019, amended the statute to increase the prohibition period from 10 to 25 years. *See* SB 155, 2019 Mont. Laws, ch. 228, § 1. Although Partridge's offense occurred before the amendment's effective date, he was charged and sentenced under the 2019 statute, which imposed a harsher minimum penalty and makes him parole ineligible for 25 years.

Mental Health Evaluation

On August 18, 2023, Dr. Dee Woolston conducted an independent psychological evaluation of Partridge at the request of defense counsel. (Doc. 26, 2nd Report.) Dr. Woolston found Partridge's cognitive functioning to be low average to average, describing him as a "slow learner." (*Id.* at 8.) He diagnosed Partridge with Schizoaffective Disorder, bipolar type, moderate to severe, but found him fit to proceed. (*Id.* at 9.)

Plea Agreement

Partridge agreed to plead guilty to SIWOC by accountability in exchange for dismissal of the other counts. (Doc. 20 at 5, ¶ 1.) The plea agreement stated the SIWOC offense occurred "between the dates of April 2019 and September 2019." (*Id.* at 4, ¶ 32.) The agreement relied upon the 2019 penalty enhancement, stating that the first 25 years of the sentence could not be suspended or deferred, and parole would not be available during that time. (*Id.* at 1, ¶ 2.)

The agreement capped the State's sentencing recommendation at 100 years, with 40 years suspended and a 25-year parole restriction, while preserving Partridge's right to argue for a lesser sentence. (*Id.* at

5, ¶ 2.) The agreement also erroneously stated that no lesser included offenses applied, despite clear precedent that sexual assault is a lesser included offense of SIWOC. (*Id*. at 4, ¶ 25); see *State v. Williams*, 2010 MT 58, ¶ 43, 355 Mont. 354, 228 P.3d 1127.

Change of Plea Hearing

Partridge pled guilty to SIWOC by accountability on November 30, 2023. (11/30/2023 Change of Plea Transcript "COP Tr.") His allocution confirmed the offense occurred between April and September 2019:

> Defense Counsel: Mr. Partridge, is it in fact true that, between the dates of April 2019 and September 2019, did you knowingly aid and assist a [C.L.] (phonetic) in the planning and execution of the commission of the crime of sexual intercourse without consent?"
>
> Partridge: Yes, sir.
>
> (COP Tr. at 8:10–16.)

Sentencing Memorandums

Both parties submitted memoranda citing the 2019 enhancement as the controlling penalty provision for Partridge's offense. (Doc. 21 at 1; Doc. 27 at 1–2.) Defense counsel stated:

> Absent exception, Count IV – Sexual Intercourse Without Consent by Accountability, considering the facts of the case, carries a mandatory minimum sentence of one-hundred years to the Montana State Prison with a parole restriction on the first twenty-five years. Mont. Code Ann. § 45-5-504[1].
>
> (Doc. 21 at 1.)

Defense counsel sought an exception to the 2019 enhancement under Mont. Code Ann. § 46-18-222(2), which provides that mandatory minimum sentences, restrictions on deferred or suspended sentences, and parole restrictions do not apply if "the offender's mental capacity, at the time of the commission of the offense for which the offender is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution." (Doc. 21 at 2–3.)

In support of the exception, counsel cited Dr. Woolston's diagnosis of Schizoaffective Disorder and referenced the psychosexual evaluation conducted by Licensed Clinical Social Worker Michael Sullivan ("Sullivan"), which, to some extent, corroborated Dr. Woolston's findings. (Doc. 26, 1st Report.)

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[1] This citation is a typo, as Mont. Code Ann. § 45-5-504 is the indecent exposure statute.

§ 222 and Sentencing Hearing

Partridge was sentenced on May 20, 2024. Although Dr. Woolston did not testify, his report was submitted to the district court as part of the presentence investigation. (SENT. Tr. at 3:25–4:5; Doc. 26, 2nd Report.) Sullivan testified that Partridge had diminished mental capacity. (SENT. Tr. at 7:2–8:10, 9:12–11:14.) However, it became apparent during Sullivan's testimony that he lacked knowledge of key facts regarding the offense – such as what actually occurred – and he ultimately conceded that there was no causal connection between Partridge's mental illness and the commission of the offense. (SENT. Tr. at 14:25–15:5, 17:11–18:10, 19:1–14.)

Both the State and the defense relied on the 2019 enhancement in making their sentencing recommendations. (SENT. Tr. at 28:6–34:22.) Defense counsel conceded the 2019 enhancement applied unless the district court found that the exception under § 222(2), for significantly diminished mental capacity, was satisfied. (SENT. Tr. at 32:20–23.)

The district court declined to apply the § 222(2) exception and adopted the State's recommendation, sentencing Partridge to 100 years

at MSP, with 40 years suspended and a 25-year parole restriction. (SENT. Tr. at 36:11–41:18.)

Discrepancy in the Written Judgment

The Judgment cites Mont. Code Ann. § 46-18-202(2) as the basis for the 25-year parole restriction. (App. A at 2.) However, the district court never invoked that statute at sentencing. Instead, the record shows the court relied on § 45-5-503(4)(a)(i) (2019) when imposing Partridge's sentence:

> These parole restrictions are a product of the legislation wherein the legislature has evaluated these crimes and the legislature has determined appropriate sentencing, and this Court is bound to follow those legislative directives and will do so in this case as well.
>
> (SENT. Tr. at 38:24–39:4.)
>
> And I'm also tasked with sentencing folks commensurately with other folks who have committed similar offenses. As they say, given the legislative parameters, that makes the job relatively clear with respect to that 25-year parole restriction that's part of being commensurate.
>
> (SENT. Tr. at 40:2–7.)

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STANDARDS OF REVIEW

A district court must sentence a defendant under the version of the statute in effect at the time the offense was committed. *Dexter v. Shields*, 2004 MT 159, ¶ 13, 322 Mont. 6, 92 P.3d 1208.

Whether a sentence is legal is a question of law reviewed de novo. *State v. Claassen*, 2012 MT 313, ¶ 14, 367 Mont. 478, 291 P.3d 1176. The Court may review any criminal sentence alleged to be illegal under the *Lenihan* rule, even if no objection was made below. *State v. Lenihan*, 184 Mont. 338, 343, 602 P.2d 997, 1000 (1979); *State v. Rambold*, 2014 MT 116, ¶ 14, 375 Mont. 30, 325 P.3d 686.

Claims of ineffective assistance are mixed questions of law and fact reviewed de novo. *State v. Hatfield*, 2018 MT 229, ¶ 18, 329 Mont. 509, 426 P.3d 569. Plea voluntariness is also reviewed de novo. *State v. Humphrey*, 2008 MT 328, ¶ 13, 346 Mont. 150, 194 P.3d 643.

SUMMARY OF ARGUMENT

Partridge's sentence is unconstitutional because the district court applied the 2019 version of Mont. Code Ann. § 45-5-503(4)(a)(i), which was not in effect when the offense occurred. The 2019 amendment increased the parole restriction from 10 to 25 years. Because the offense

occurred between April and September 2019 – before the amendment's October 1 effective date – application of the enhanced penalty violated the Ex Post Facto Clauses of the United States and Montana Constitutions.

This error infected the charging documents, plea agreement, sentencing memoranda, and oral pronouncement. Because Partridge was prosecuted and sentenced under a statute that did not yet exist, multiple remedies are available to the Court:

Direct Correction: The Court can reduce the parole restriction to 10 years under the 2017 statute. This remedy is consistent with the relief provided in *State v. Gone*, 179 Mont. 271, 587 P.2d 1291 (1978), and *State v. Azure*, 179 Mont. 281, 587 P.2d 1297 (1978).

Remand for Resentencing: Under the line of cases beginning with *State v. Tracy*, 2005 MT 128, 327 Mont. 220, 113 P.3d 297 (superseded on other grounds), the Court can remand the case for Partridge to be sentenced under the correct statute.

Vacate the Guilty Plea: The most appropriate remedy is to permit Partridge to withdraw his guilty plea. His plea was not voluntary because he was misadvised throughout the case that he faced

a mandatory 25-year parole restriction, when in fact the law required only a 10-year minimum. Counsel's failure to identify and object to this ex post facto error constituted ineffective assistance under *Strickland v. Washington,* 466 U.S. 668 (1984). Further, under *State v. Arellano*, 2024 MT 108, 416 Mont. 406, 549 P.3d 428, and *State v. Cleveland*, 2014 MT 305, 377 Mont. 97, 338 P.3d 606, the plea agreement is void and unenforceable because it contemplated a sentence not authorized by law.

ARGUMENT

I. THE DISTRICT COURT VIOLATED THE EX POST FACTO CLAUSES.

The Ex Post Facto Clauses prohibit laws that retroactively increase punishment for past conduct. U.S. Const. art. I, § 10, cl. 1; Mont. Const. art. II, § 31. A law violates the Ex Post Facto Clauses if it is applied to conduct that occurred before its enactment and either increases the penalty, eliminates available defenses, or alters the legal consequences of the crime. *Collins v. Youngblood*, 497 U.S. 37, 41–42 (1990); *Weaver v. Graham*, 450 U.S. 24, 29 (1981); *State v. Suiste*, 261 Mont. 251, 253, 862 P.2d 399, 400 (1993).

This Court has "consistently held that a person must be sentenced under the statutes in effect at the time of the offense." *State v. Southwick*, 2007 MT 257, ¶ 25, 339 Mont. 281, 169 P.3d 698 (citing *Tracy*, ¶ 16). "The prohibition on ex post facto laws includes statutes which make the punishment for a crime more burdensome than under the prior law." *Southwick*, ¶ 25 (citing *Suiste*, 261 Mont. at 253, 862 P.2d at 401). Thus, "[d]istrict courts cannot apply a sentencing statute enacted after the commission of an offense because to do so violates the prohibition on ex post facto laws." *Southwick*, ¶ 25 (citing *Gone*, 179 Mont. at 280, 587 P.2d at 1297); *see also Azure*, 179 Mont. at 282, 587 P.2d at 1298.

A trial court's authority to impose sentences in criminal cases is defined and constrained by statute, and a district court has no power to impose a sentence in the absence of specific statutory authority. *State v. Stephenson*, 2008 MT 64, ¶ 30, 342 Mont. 60, 179 P.3d 502. A sentence is not illegal if it falls within statutory parameters. *State v. Garrymore*, 2006 MT 245, ¶ 9, 334 Mont. 1, 145 P.3d 946. But a sentence not based on statutory authority is illegal. *Stephenson*, ¶ 32 (citing *State v. Krum*,

2007 MT 229, ¶ 11, 339 Mont. 154, 168 P.3d 658); *State v. Ruiz*, 2005 MT 117, ¶ 12, 327 Mont. 109, 112 P.3d 1001.

Partridge committed SIWOC between April and September 2019. This date range is confirmed by the charging documents, the plea agreement, and his guilty plea allocution. (Doc. 10 at 1–2; Doc. 20 at 4, ¶ 32; COP Tr. at 8:10–16.) The controlling penalty enhancement for his offense was Mont. Code Ann. § 45-5-503(4)(a)(i) (2017), which prohibited parole eligibility only for the first 10 years.

The State charged Partridge under the 2019 statute in error. All parties – including the district court – relied on the 2019 enhancement throughout the proceedings. The plea agreement expressly incorporated the 25-year parole restriction. (Doc. 20 at 1, ¶ 2.) Both parties' sentencing memoranda and the court's oral pronouncement of sentence relied on the amended statute. (Docs. 21, 27; SENT. Tr. at 38:22–41:18.) This retroactive application of a more severe mandatory minimum punishment violated the Ex Post Facto Clauses of both constitutions.

If the *Lenihan* exception applies, this Court has two established options to remedy the error. First, the Court may strike the unconstitutional 25-year parole restriction and replace it with the

correct 10-year restriction required under the 2017 version of the statute. *See Gone*, 179 Mont. at 280, 587 P.2d at 1297; *Azure*, 179 Mont. at 282, 587 P.2d at 1298.

In the alternative, the Court may remand for resentencing under the proper version of the law. *See Tracy*, ¶ 31; *State v. Crosley*, 2009 MT 126, ¶ 58, 350 Mont. 223, 206 P.3d 932. On remand, the district court must base its sentencing decision on objective information concerning Partridge's conduct and may not give him a harsher penalty for asserting his right to a lawful sentence. *State v. Jackson*, 2007 MT 186, ¶ 15, 338 Mont. 344, 165 P.3d 321.

II. PARTRIDGE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

The Sixth and Fourteenth Amendments to the United States Constitution and Article II, Section 24, of the Montana Constitution, guarantee a criminal defendant the right to effective assistance of counsel. *State v. Kougl*, 2004 MT 243, ¶ 11, 323 Mont. 6, 97 P.3d 1095.

Montana applies the two-pronged standard from *Strickland v. Washington*, 466 U.S. 668 (1984), to evaluate claims of ineffective assistance. *State v. Roundstone*, 2011 MT 227, ¶ 32, 362 Mont. 74, 261 P.3d 1009. A defendant must show: (1) that counsel's performance fell

below an objective standard of reasonableness, and (2) that there is a reasonable probability the result of the proceeding would have been different but for counsel's errors. *Kougl*, ¶ 11 (citing *State v. Turnsplenty*, 2003 MT 159, ¶ 14, 316 Mont. 275, 70 P.3d 1234).

Claims of ineffective assistance on direct appeal must be supported by the record. *Kougl*, ¶ 14. When the record is silent regarding the rationale for counsel's conduct, the Court typically reserves the claim for postconviction relief unless "no plausible justification" exists for the challenged action or inaction. *State v. Sartain*, 2010 MT 213, ¶ 30, 357 Mont. 483, 241 P.3d 1032. In such cases, "[i]t is unnecessary to ask 'why' counsel performed as alleged where there is no plausible justification for counsel's actions or inactions." *Roundstone*, ¶ 32 (quoting *Kougl*, ¶ 15).

Here, both *Strickland* prongs are satisfied on the face of the record. Defense counsel permitted Partridge to plead guilty and be sentenced under a penalty enhancement that was not in effect at the time of the offense and that imposed a harsher mandatory minimum sentence. Counsel did not object, seek clarification, or otherwise alert

the court to the ex post facto implications of sentencing Partridge under the wrong statute.

There is no plausible justification for this failure. The version of the statute in effect at the time of the offense imposed a significantly less severe sentence. Any reasonably competent attorney would have identified the sentencing exposure under the governing law and raised the issue with the court. See *Kougl*, ¶ 15 (holding no justification exists when counsel fails to raise clear legal error). The error was not strategic or tactical. It was a fundamental misunderstanding of the applicable sentencing law that directly harmed the client.

The prejudice is equally clear. Had counsel informed the court or negotiated under the correct version of the statute, Partridge would have faced only a 10-year parole restriction rather than 25. The error more than doubled the time Partridge must serve before becoming parole eligible. This is precisely the kind of outcome-altering error *Strickland* contemplates.

III. PARTRIDGE'S GUILTY PLEA WAS NOT KNOWING OR VOLUNTARY.

The Due Process Clause of the Fourteenth Amendment requires that a guilty plea be entered knowingly, voluntarily, and intelligently.

Boykin v. Alabama, 395 U.S. 238, 243 (1969). A valid plea must be based on an affirmative showing on the record that the defendant understood both the nature of the charge and the direct consequences of the plea. *Brady v. United States*, 397 U.S. 742, 748 (1970); *State v. Hendrickson*, 2014 MT 132, ¶ 15, 375 Mont. 136, 325 P.3d 694.

A plea induced by misinformation or an incomplete advisement of sentencing consequences is constitutionally invalid. *State v. Roach*, 1999 MT 38, ¶ 15, 293 Mont. 311, 975 P.2d 817. When the record shows ambiguity or uncertainty about whether a plea was voluntary, the doubt must be resolved in favor of the defendant. *Hendrickson*, ¶ 14; *State v. Boucher*, 2002 MT 114, ¶ 25, 309 Mont. 514, 48 P.3d 21.

District courts must advise defendants of the mandatory minimum sentence and any parole restrictions associated with the charge. Mont. Code Ann. § 46-12-210(1). Failure to comply with this statutory duty renders a plea invalid. *State v. Otto*, 2012 MT 199, ¶ 9, 366 Mont. 209, 285 P.3d 583.

In *State v. Melone*, 2000 MT 118, ¶¶ 16–23, 299 Mont. 442, 2 P.3d 233, this Court reversed a conviction where the defendant was not properly advised of a penalty enhancement, holding that the plea was

involuntary under § 46-12-210. Similarly, in *State v. Sanders*, 1999 MT 136, ¶ 22, 294 Mont. 539, 982 P.2d 1015 (overruled on other grounds by *State v. Deserly*, 2008 MT 242, ¶ 12 n.1, 344 Mont. 468, 188 P.3d 1057), the Court held a plea invalid where the defendant was not adequately informed of sentencing consequences and lesser included offenses.

Partridge was affirmatively misadvised by both defense counsel and the district court – for the entire case – that he faced a mandatory 25-year sentence and parole restriction. This misinformation was repeated in open court, in the plea agreement, and at sentencing. The record does not reflect any discussion of the correct penalty, let alone a meaningful advisement or waiver.

A plea based on an inflated penalty is inherently coercive. Faced with the prospect of a 25-year minimum rather than 10, Partridge was induced to plead guilty under a materially false understanding of the consequences.

Further compounding the problem, Partridge was also misinformed regarding lesser included offenses, and he suffers from diagnosed Schizoaffective Disorder and has been identified as a "slow learner." (Doc. 20 at 4, ¶ 25; Doc. 26, 2nd Report at 8–9.) A defendant

with cognitive limitations is especially dependent on accurate legal advice and judicial advisement. *See Godinez v. Moran*, 509 U.S. 389, 401 n.12 (1993) (noting that the voluntariness of a plea must take into account the defendant's mental condition when relevant).

Because Partridge entered his plea based on fundamentally incorrect information about a direct and substantial consequence – the length of mandatory imprisonment before parole eligibility – his plea cannot be considered knowing, intelligent or voluntary. This Court should vacate the plea and remand for further proceedings under the 2017 statute.

IV. THE PLEA AGREEMENT IS VOID BECAUSE IT CONTEMPLATED AN ILLEGAL SENTENCE.

A plea agreement that results in or is premised upon an illegal sentence is void and unenforceable. *State v. Arellano*, 2024 MT 108, ¶ 12 (quoting *State v. Cleveland*, 2006 MT 104, ¶ 23, 332 Mont. 354, 137 P.3d 1098). As this Court has held, "contract obligations cannot include the enforcement of an illegal, and therefore unenforceable, provision." *Id*.

In *Cleveland*, the Court invalidated a plea agreement where the bargained for deferred sentence was not legally available to the

defendant under the governing sentencing statutes. *Cleveland*, ¶ 22. The same principle applies here, as the sentence imposed was not just unauthorized by statute, but also unconstitutional.

Partridge's plea agreement expressly relied on a penalty enhancement that was not in effect at the time the offense was committed. (Doc. 20 at 1, ¶ 2.) The agreement locked in a 25-year parole restriction that did not apply and more than doubled his mandatory time in prison. A plea agreement that adopts an ex post facto penalty is, by definition, based on an illegal sentencing term and cannot be enforced. *Arellano*, ¶¶ 12–13.

CONCLUSION

Partridge was sentenced under a statute that did not yet exist, in violation of the Ex Post Facto Clauses of the United States and Montana Constitutions. This error was compounded by ineffective assistance of counsel, a misinformed and involuntary guilty plea, and a plea agreement premised on an illegal sentence. This Court should strike the unlawful 25-year parole restriction, or alternatively, vacate Partridge's plea and remand for further proceedings under the 2017 version of Mont. Code Ann. § 45-5-503(4)(a)(i).

Respectfully submitted this 16th day of July, 2025.

Britt Cotter
Attorney for Defendant/Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that the Appellant's Opening Brief is printed with proportionately spaced Times New Roman typeface of 14 points; is double-spaced except for lengthy quotations or footnotes; and does not exceed 10,000 words. The exact word count, as calculated by my Microsoft Word software and excluding tables and certificates is 3,925.

Respectfully submitted this 16th day of July, 2025.

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CERTIFICATE OF SERVICE

I, Britt Cotter, hereby certify that I have served true and accurate copies of the foregoing Appellant's Opening Brief to the following on July 16, 2025:

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