IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0583, DA 23-0585

STATE OF MONTANA,

Plaintiff and Appellee,

v.

TAYLOR JAY DAMM,

Defendant and Appellant.

REPLY BRIEF OF APPELLANT

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, the Honorable Heidi J. Ulbricht, Presiding

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INTRODUCTION

The State does not dispute Taylor's claims that the district court unlawfully denied him credit for time served and for elapsed time served. Instead, the State asserts Taylor's revocation sentences have expired and his claims are now moot.

While the State is correct to tacitly concede the merits of Taylor's claims, its remaining contentions are wrong. This Court should not avoid resolving Taylor's appeal based on the State's threadbare assertion of mootness. But even if the State is right that Taylor's individual claims are moot, the voluntary cessation and public interest exceptions to mootness apply, and this Court should address Taylor's appeal on its merits.

ARGUMENT

I. The State has not demonstrated that Taylor's appeal is moot.

Without citation to the record, the State asserts Taylor discharged his sentences on March 11, 2025. (Appellee's Br. 16.) Although the undersigned was able to reverse-engineer this purported March 11 discharge date using the record on appeal and popular publicly available date calculator tools, there is no indication in the record before

this Court that the Department of Corrections utilized the same calculation, let alone actually released Taylor from custody on that date. *See Date Calculator: Add to or Subtract From a Date*, Time and Date, https://www.timeanddate.com/date/dateadd.html (last accessed August 4, 2025). Although DOC "is charged with maintaining and reporting accurate information on every felony offender as to time served[,]" this Court has recognized such calculations are not always correct. *See State v. Little Coyote*, 2023 MT 243, ¶ 10, 414 Mont. 299, 539 P.3d 1142. Likewise, Taylor's purported absence from DOC's Offender Search website is not proof positive his sentence has discharged. (*See* Appellee's Br. 16 n.2.) This Court should not refuse to consider the merits of Taylor's appeal upon the State's bare-bones assertions.

II. Even if Taylor's appeal is moot, two exceptions to mootness apply.

Even if State has demonstrated mootness, the State does not meet its heavy burden of demonstrating the voluntary cessation exception does not apply. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000).

In the context of civil cases, "a case may be mooted by the defendant's voluntary conduct only when it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Havre Daily News, LLC v. City of Havre*, 2006 MT 215, ¶ 38, 333 Mont. 331, 142 P.3d 864 (quoting *Laidlaw*, 528 U.S. at 189). The State characterizes the "allegedly wrongful behavior" at issue in this case to be "the district court's calculation of elapsed time credit and credit for time served[,]" which it describes as "a single action in which the alleged illegality ceased when Damm discharged both sentences." (Appellee's Br. 17-18.) This characterization oversimplifies the problems challenged in this consolidated appeal—and, by extension, recurring problems that could be avoided by adjudicating Taylor's claims on their merits.

As noted in Taylor's opening brief, erroneous calculations by both the probation officer and the prosecuting attorney led to the unlawfully lengthened sentences imposed in this case. (*See* Appellant's Br. 10-11, 14-17, 18-20, 21.) This Court is no stranger to these recurring problems. *See generally, e.g.*, *State v. Pillans*, 2025 MT 100, 422 Mont. 1, 568 P.3d 885. Even where an alleged wrongdoer "evinces apparent

genuine confusion over the legality" of its conduct rather than intentional obstruction and manipulation of the legal system, "it becomes reasonable to expect that if a substantially similar situation occurs, the [party] will . . . perpetrat[e] a substantially similar, though not identical, wrong." *Havre Daily News*, ¶ 39. "In such cases, final judicial adjudication may provide useful guidance that may obviate future violations" and is permitted under the voluntary cessation exception to mootness. *Havre Daily News*, ¶ 39.

Although many of Taylor's claims for unlawfully denied credit are straightforwardly meritorious under the plain language of applicable statutes and this Court's precedent, one issue in particular is an open question that the State has thus far avoided adjudicating, and this Court should apply the voluntary cessation exception to resolve it.

Taylor's opening brief explained that he should have received credit for time served for the 90 days he spent at Connections Corrections Program as a probation sanction. (Appellant's Br. 21-23.) Taylor alternatively requested elapsed time credit for that time period. (Appellant's Br. 24.) At the time Taylor's opening brief was filed, these alternate requests were distinctions without differences, because the

district court had no discretion to deny such credit regardless of how it was labeled. (*See* Appellant's Br. 13 (time served), 17-18 (elapsed time).) However, following legislative amendments effective July 1, 2025, a revoking district court, "in its discretion, may deny elapsed time credit for a reasonable period of time related to a violation or multiple violations[,]" and defendants are not entitled to elapsed time credit "for time spent in a correctional institution as defined in 45-2-101." Mont. Code Ann. § 46-18-203(7)(b)(i) (2025); 2025 Mont. Laws Ch. 498. Following the 2025 Legislature's amendments, the question of whether programs like Connections Corrections are "detention center[s]" where a defendant earns credit for time served (*i.e.*, "incarceration" in the 2025 statute, Mont. Code Ann. § 46-18-203(7)(b)(ii) (2025)) is a legal question that determines entitlement to credit for defendants facing revocation.

An appeal recently before this Court raised this issue with respect to a different treatment facility, the Montana Chemical Dependency Center. *See* Appellant's Br. 11-23, *State v. Gravelle*, No. DA 23-0441 (Mont. Jan. 24, 2025). The State disputed whether MCDC was a "detention center" but avoided dispositive resolution of the issue by conceding the particular defendant should have received elapsed time

credit for her time spent there. Appellee's Br. 9-11, *State v. Gravelle*, No. DA 23-0441 (Mont. Mar. 19, 2025). This Court accordingly issued an unpublished order remanding the case for such credit to be granted. Order, *State v. Gravelle*, No. DA 23-0441 (Mont. May 20, 2025).

The State's concession of error in *Gravelle* illustrates that Taylor is not alone in unlawfully being denied credit against his revocation sentences for time spent in inpatient treatment. Even if the State is correct that Taylor has now discharged *his* sentences, the State has not demonstrated—and cannot demonstrate on this record—that probation officers, prosecuting attorneys, and judges throughout Montana have voluntarily ceased miscalculating and unlawfully denying credit under substantially similar circumstances. *See Havre Daily News*, ¶ 39. Accordingly, the State has not met its heavy burden of demonstrating the voluntary cessation exception should not apply to this issue.

For the same reasons, the public interest exception to mootness applies. The State correctly noted that this exception applies where the case presents an issue of public importance, the issue is likely to recur, and an answer to the issue will guide public officers in the performance of their duties. (Appellee's Br. 19 (citing *Ramon v. Short*, 2020 MT 69,

¶ 21, 399 Mont. 254, 460 P.3d 867).) "[W]here questions implicate fundamental constitutional rights or where the legal power of a public official is in question, the issue is one of public importance." *Ramon*, ¶ 22. A public official's legal power to physically detain a person—the root of the issues in this case—"implicates both[.]" *Ramon*, ¶ 23. As discussed above, recent filings with this Court demonstrate this issue is likely to recur, and the Legislature's 2025 amendments to the revocation statute elevate this issue to one of potentially case-dispositive legal import. And, finally, an answer to this open question will guide probation officers, prosecuting attorneys, defense attorneys, DOC Records Bureau employees, and judges alike in the performance of their duties relating to revocations. Such guidance will prevent redundant litigation, piecemeal concessions, and unlawful detention of people who decline to appeal or whose revocation sentences are too short to wind through the court system in time[1]. *See Ramon*, ¶¶ 23-26.

[1] The State's suggestion that Taylor or others in similar situations could or should resort to a petition for writ of habeas corpus (Appellee's Br. 19-20) fails to acknowledge that, unlike direct appeal, indigent defendants have no absolute right to appointment of counsel in habeas proceedings, *see Kallowat v. State*, 2004 MT 152, ¶ 11, 321 Mont. 501, 92 P.3d 1176, and that this Court has declined to consider the merits of habeas petitions from defendants who have pending direct appeals, *see* Order, *Pillans v. Salmonsen*, DA 25-0058 (Mont. Feb. 4, 2025).

In sum, even if the State is correct that Taylor discharged his sentence and his appeal is therefore moot, the voluntary cessation and public interest exceptions to mootness apply to his claim for credit for time served for his 90 days at Connections Corrections. Applying these exceptions, this Court should resolve Taylor's appeal in his favor because the State declined to oppose it on their merits.

III. If this appeal is moot and no exceptions to mootness apply, dismissal of the appeal, not affirmance, is the appropriate remedy.

The State asks this Court to affirm the judgments below. (Appellee's Br. 20.) However, dismissal of the appeal is the appropriate resolution when an appeal becomes moot. *See State v. Benn*, 2012 MT 33, ¶ 10, 364 Mont. 153, 274 P.3d 47. If this Court concludes that Taylor's sentences have discharged and no exceptions to mootness apply, the Court should dismiss this appeal rather than affirm the judgments below.

CONCLUSION

The State has not established that Taylor's appeal is moot. Even if his sentences have discharged, however, the State has not met its heavy burden of establishing the voluntary cessation exception to

mootness does not apply, and the public interest exception also permits this Court to resolve his claims on their merits. Because the State did not oppose Taylor's claims on their merits, this Court should resolve them in his favor and reverse and remand for correction of the judgments below.

Respectfully submitted this 5th day of August, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1,659, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

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CERTIFICATE OF SERVICE

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