IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0186

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JUSTIN ALLEN PETTIT,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, The Honorable Elizabeth A. Best, Presiding

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STATEMENT OF THE ISSUE

Did the district court correctly deny the Appellant's due process objection after he failed to support his claim that the State had not disclosed the evidence used against him?

STATEMENT OF THE CASE

In 2007, the Appellant, Justin Pettit (Pettit), pleaded guilty to sexually assaulting a 13-year-old boy. (District Court Documents (Docs.) 1-2, 20-21, 35-36, 40.1.) On October 11, 2007, the district court sentenced Pettit and imposed a 20-year commitment to the Department of Corrections (DOC) with 16 years suspended and various conditions. (Doc. 52 at 2-7.)

On January 31, 2013, the district court revoked Pettit's suspended sentence based on Pettit's admission to failing to comply with his treatment obligations and imposed a fully suspended 16-year DOC commitment. (Docs. 78-79.)

On April 4, 2013, the district court revoked Pettit's suspended sentence a second time based on Pettit's admission to violating multiple conditions. (Doc. 92.) The district court reimposed the 16-year DOC commitment with 12 years suspended. (Docs. 92-93.)

On May 26, 2023, the State filed a third revocation petition, alleging numerous violations. (Doc. 95.) Pettit admitted to one violation. (2/5/24 Tr. at 8-11.)

The State withdrew the remaining violations for evidentiary purposes but relied on the factual bases of those violations for disposition. (*Id*.) Pettit's probation officer testified generally about Pettit's abysmal adjustment to supervision and inability to comply with treatment. (*Id*. at 12-15.) She noted that Pettit had frequently gone to places where minors congregated, which was supported by GPS data, and had invited two minor boys to his hotel room and given them marijuana. (*Id*.)

During the probation officer's testimony, Pettit objected based on due process and argued the State had not disclosed evidence. (*Id*. at 15-21.) The State said it had disclosed everything Pettit had requested except for emails that did not exist. (*Id*. at 18-21.) The district court overruled Pettit's objection. (*Id*. at 21.) After the testimony concluded, the district court revoked Pettit's suspended sentence and imposed a 12-year DOC commitment with no time suspended. (*Id*. at 42-43; Docs. 130, 132.)

STATEMENT OF THE FACTS

I. The underlying offense

In July 2006, Pettit, who was 18 at the time, had spent the night in a tent with three younger boys, including the victim who was 13.[1] (Docs. 1, 20.) The

[1] Pettit entered a guilty plea to resolve the charges, so the facts of the underlying offense are based on the affidavit in support of the Information. (Docs. 1, 20, 35-36, 40.1.)

three young boys were friends, and the tent was set up in the yard of one boy's home. (*Id*.) The group watched a movie on a tablet in the tent and then the three younger boys went to sleep. (*Id*.) During the night, the victim woke up because Pettit was trying to pull down his pants. (*Id*.) The young boy told Pettit "no" and tried to get out of the tent. (*Id*.) Pettit pulled the boy back into the tent by his legs, held him face down, and forcefully put his penis into the young boy's anus. (*Id*.) When Pettit finished, the young boy left the tent and slept outside until morning. (*Id*.) The victim disclosed the assault to his parents the next day, which resulted in Pettit's arrest. (*Id*.)

During the investigation, a second boy who had spent the night in the tent with Pettit and the other boys disclosed that Pettit had woken him up that same night and asked if he could play with the young boy's penis. (*Id*.) The boy refused, moved away from Pettit, and went back to sleep. (*Id*.) The boy disclosed it was not the first time Pettit had asked him that question. (*Id*.) On a previous night, the boy had been asleep at the same house, and Pettit had woken him up and asked him the same question—could he play with his penis. (*Id*.) The prior incident had occurred in the living room, and the boy had similarly told Pettit no and moved to a different location to sleep. (*Id*.)

II. Procedural history

A. The original conviction and sentence

On July 27, 2006, the State charged Pettit. (Doc. 2.) The State later amended the Information and charged Pettit with felony sexual assault, in violation of Mont. Code Ann. § 45-5-502(1), (3), and (5)(b), and felony attempted sexual assault, in violation of Mont. Code Ann. §§ 45-4-103 and 45-5-502(1) and (3). (Doc. 21.) The State included notices for both offenses and the penalty enhancements based on the ages of the victims, who were both under 14. (*Id*.)

On July 26, 2007, Pettit pleaded guilty to the felony sexual assault charge, pursuant to a plea agreement with the State. (Docs. 35-36, 40.1.) On October 11, 2007, the district court sentenced Pettit and imposed a 20-year DOC commitment with 16 years suspended. (Doc. 52 at 2.) The district court imposed various conditions for the suspended portion of Pettit's sentence. (*Id*. at 3-7.)

B. The first revocation proceedings

On October 9, 2012, the State filed a petition to revoke Pettit's suspended sentence. (Doc. 60.) The State alleged Pettit had violated his sentencing conditions that prohibited his access to or possession of pornography and required him to complete sex offender treatment because he had been terminated from the program. (*Id*. at 4.) Pettit's probation officer said Pettit admitted to possessing

pornography and accessing the internet without approval. (*Id*. at 5.) He further explained Pettit's sexual promiscuity and unlawful sexual behaviors. (*Id*.)

Specifically, the probation officer said Pettit, who was a manager at the Traveler's Inn in Missoula, had been arrested for offering an interviewee $100 to look at his genitals. (*Id*.) He said Pettit had admitted that he had used a room at the Traveler's Inn to engage in sexual activity with two men in exchange for money. (*Id*.) The State attached a letter from Pettit's treatment provider, Brenda Erdelyi (Erdelyi), who said she terminated Pettit because he admitted to engaging in prostitution with at least one if not two adult men. (*Id*. at 7.) Erdelyi said Pettit had previously been caught engaging in and sanctioned for conduct that was "a continuation of sexually compulsive and destructive behavior (i.e., 'one-night stands,' soliciting sex from interviewees at his place of employment)." (*Id*.) Erdelyi said that Pettit "pose[d] a level of risk to the community that is not acceptable." (*Id*.)

During his initial appearance on the petition, Pettit denied the alleged violations, but he later pleaded true to being terminated from sexual offender treatment. (Docs. 68, 74-75, 78.) On January 31, 2013, the district court revoked Pettit's suspended sentence and imposed a fully suspended 16-year DOC commitment, provided 130 days of credit for time served, and imposed various conditions. (Docs. 78-79.)

C. The second revocation proceedings

Two weeks after the district court issued its disposition order for Pettit's first revocation, Pettit made an initial appearance on a new arrest because his probation officer had found pornography on Pettit's computer. (Doc. 80.) On February 26, 2013, the State filed a new petition to revoke Pettit's suspended sentence. (Docs. 81-82.) The State alleged Pettit had violated his sentencing conditions that prohibited his access to or possession of pornography, that required him to complete sex offender treatment because he had been terminated from the program, and that restricted his internet usage. (Doc. 81 at 2-3.) The probation officer said Pettit used the internet without prior approval to view pornography three different times between February 8, 2013, and February 10, 2013. (*Id*.) Pettit also accessed the internet without prior approval four different times between February 9, 2013, and February 12, 2013, to respond to Craigslist ads to arrange sexual encounters with other individuals. (*Id*.)

Pettit initially denied all the allegations. (Doc. 88.) But during the disposition hearing on April 4, 2013, Pettit answered true to violating all the conditions while limiting his admissions to three of the supporting factual allegations. (Doc. 92.) The district court reimposed the 16-year DOC commitment with 12 years suspended and 140 days of credit for time served. (Docs. 92-93.) It imposed various conditions for the suspended portion of Pettit's sentence and

recommended that Pettit complete phase 2 of sex offender treatment at MSP before being released in an appropriate community setting. (Docs. 92-93.)

Pettit served his time in MSP and on November 14, 2016, he began serving his suspended sentence in Missoula. (Doc. 95 at 4.)

D. The third revocation proceedings

On May 26, 2023, the State filed a third revocation petition, alleging violations of five conditions of Pettit's suspended sentence. (Doc. 95.) The State alleged Pettit had been terminated from his sex offender treatment on May 18, 2023. (Doc. 95 at 4.) It alleged Pettit had been communicating with a 15-year-old boy on SnapChat and had "hung out" with the boy at Southgate Mall and received a ride from the boy. (*Id*.) Pettit had two unapproved internet-capable devices. (*Id*. at 5.) Pettit's GPS unit showed more than two dozen instances of him frequenting places where minors congregate, including Playfair Park, Sentinel High School, and Southgate Mall. (*Id*.) Pettit had also violated the pornography condition because he had a video of himself masturbating, a downloaded video of another male masturbating, and nude photos downloaded onto his SnapChat account. (*Id*.)

Pettit's probation officer, Kate Darnell (Officer Darnell), reported the numerous unsuccessful intervention methods used to address Pettit's repeated noncompliance. (*Id*. at 5-6.) She explained:

> Providing interventions with the defendant was proven never to be easy. The defendant rarely takes accountability for his actions and

> continuously repeated the same unwanted behaviors over and over. A majority of the defendant's trouble with probation over the years was for aggressive and/or inappropriate behaviors with employers and customers which consistently occurred once he was out in the community. It should be noted the defendant was accused of sexually inappropriate behaviors which led to termination of employment from at least two employers. Though hard to comment on each intervention used throughout the seven (7) years the defendant has been out, the undeniable common theme is that the defendant was unwilling to utilize his support system (treatment and P&P) to start making some necessary changes in his life. Post release from prison the defendant has displayed sexual preoccupation, and for unknown reasons, failed to utilize the treatment tools he learned in and outside of the prison system. The defendant did what he wanted, when he wanted, and refused to conform to anything else.

(*Id*. at 5.)

Officer Darnell reported that in January 2023 Pettit had invited a 9-year-old boy and a 15-year-old boy to his hotel room to smoke marijuana. (*Id*. at 6; Doc. 111.) Officer Darnell imposed GPS monitoring and a jail sanction, and, after Pettit's release, the City of Missoula charged him with misdemeanor endangering the welfare of a child. (*Id*.) In a supplemental report of violation, the State alleged another count based on this incident, which was a violation of the condition that required Pettit to obey all laws. (Doc. 111.) The State alleged Pettit had provided marijuana to the 15-year-old boy. (*Id*.)

Officer Darnell said Pettit's "adjustment to supervision could best be described as unstable, explosive, dramatic, and high risk" and called it "abysmal." (Doc. 95 at 6-7.) She said Pettit consistently struggled in his sexual offender

treatment and had been "fired from roughly ten employers for his aggressive and inappropriate behaviors." (*Id*. at 6.) Even when Pettit was engaging in his treatment, he "was hiding criminal and sexually high risk behaviors in the following ways[:] possession of unmonitored smart phones with pornography, secretly on social media sites, contacting minor males, driving minor males in his vehicle, frequenting places minors congregate and attempting to sell drugs to minors." (*Id*.)

In her recommendation, Officer Darnell said:

> The defendant is an undeniable risk to the community and so heavily in his offending cycle, that the only safe place for him to be is in Montana State Prison, I respectfully recommend the defendant's twelve (12) year suspended sentence be revoked and he receive a twelve (12) year commitment to MSP where he can receive treatment while in custody. It is my hope the prison's new treatment program will address the defendant's high risk behaviors and better equip him for life back in society.

(*Id*. at 7.) She also recommended elapsed time credit from October 1, 2018, to November 1, 2019, and August 1, 2021, to January 1, 2022, for a total of one and a half years. (*Id*.) She explained that Pettit's "history is riddled with constant aggression/inappropriate behaviors which led to termination from employment every few months. He was never never [sic] considered to be stable outside of the time I am allotting." (*Id*.)

On June 21, 2023, Pettit's counsel filed a notice of assignment and request for discovery. (Doc. 104.) During his initial appearance, Pettit denied the State's allegations. (Doc. 105.) On August 21, 2023, the district court held a representation

hearing pursuant to Pettit's request for new counsel. (Docs. 109, 114.) After hearing from Pettit and his counsel, the district court found new counsel was not required and denied Pettit's request. (8/21/23 Tr. at 3-23.) During the hearing, Pettit's counsel said that he had obtained the police reports regarding Pettit's new charges in Missoula. (*Id*. at 15-16.)

During a hearing on December 4, 2023, Pettit answered true to the first alleged violation—failure to complete sexual offender treatment. (12/4/23 Tr. at 7.) But the district court did not proceed to disposition due to Pettit's persistent complaints about his counsel, which focused on Pettit's displeasure with his counsel's efforts to pursue evidence. (*Id*. at 8-10.) Pettit's counsel explained that count four in the report of violation was based on Pettit's presence in prohibited places. (*Id*. at 12-15.) Pettit claimed there were emails from his probation officer, Officer Darnell, that allowed him to go to these places. (*Id*.) Pettit's counsel said he had requested those emails from the State. (*Id*.) The State responded that there are no emails that granted Pettit permission, and it provided Officer Darnell's chronological notes, which summarized her communications with Pettit. (*Id*.)

Pettit wanted his counsel to do more, including issuing subpoenas to his email provider.[2] (*Id*. at 16-25.) Pettit explained that he had personally saved emails between himself and Officer Darnell. (*Id*. at 17-22.) The district court asked Pettit why he could not access his own records, and Pettit provided his counsel with the name of a family member who could get access to Pettit's emails. (*Id*.)

Pettit's counsel said records from Pettit's email provider would help them address the State's allegation regarding Pettit's association with a SnapChat account. (*Id*. at 22-25.) To resolve Pettit's complaints, the district court suggested that Pettit's counsel get assistance from the State to draft a subpoena for Pettit's internet provider. (*Id*. at 22-29.) The State said it did not have the information that Pettit wanted and it did not believe it was necessary. (*Id*. at 25-29.) In response to the State's reluctance, the district court clarified that it just wanted the State to discuss with Pettit's counsel language that an internet provider would need in a subpoena. (*Id*.) The State agreed to have that conversation, and the district court specified it was not requiring the State to do any more than that. (*Id*.) Pettit subsequently filed two subpoenas, but neither were for the internet provider. (Docs. 128-29.)

[2] Pettit also wanted his counsel to subpoena one of his sex offender therapists to address the allegation that he used SnapChat. (12/4/23 Tr. at 16-25.) His counsel said he made a strategic decision not to call her as a witness based on his conversations with her. (*Id*.)

On February 5, 2024, Pettit appeared for his disposition hearing and again answered true to the first alleged violation—failure to complete sexual offender treatment. (2/5/24 Tr. at 8-10.) The State withdrew the remaining violations for evidentiary purposes but relied on the factual bases of those violations for disposition. (*Id*. at 10-11.) Officer Darnell testified, and she began her testimony by reiterating her summary of Pettit's time on supervision. (*Id*. at 12-14.) In her testimony, she reiterated her comments in the report of violation and said, "The defendant's adjustment to supervision was abysmal." (*Id*. at 12.)

> He was known to Probation and Parole, employers, landlords, and providers as difficult to work with. He never reached appropriate community reintegration and based on his own attitudes and behaviors, prevented himself from securing stable housing and employment. He consistently placed himself in chaos and then allowed his chaos to drag him back into his offending cycle.
>
> And, I guess, just what I'd say is: Though we have dismissed a whole bunch of counts here, the writing's on the wall. He was around minors. He had minor boys in his car. He was ticketed for providing marijuana to a minor boy in his hotel room. Yeah, I guess that's just how I would summarize it. But, again, a year ago I wrote a really good adjustment for him on the ROV.

(*Id*. at 13-14.)

Officer Darnell explained further that she had repeatedly had issues with Pettit frequenting places where minors congregate, which was supported by GPS data, that Pettit had electronic devices without the required monitoring software,

and that she had found that Pettit had pornographic materials and had communicated with minors on social media. (*Id*. at 14-15.)

Pettit's counsel objected on due process grounds. (*Id*. at 15-21.) He explained:

> MR. VAN DER HAGEN: Yes. Okay. So the idea here is, Your Honor: After that last hearing we had December 4th, I wrote to Ms. Lofink that very Monday and followed up about it dealing with the issues of the search warrants that I believe Ms. Darnell is going to talk about or was just about to talk about the fruits or the products or what they found in those two search warrants, as well as the information on his cellphone which has a file that has—Mr. Pettit says—e-mails from Ms. Darnell to him allowing him to do things like be at the mall, at the, you know, park or around the school. His—Tyler Litchfield, his chaperone, was with him at all times, and is on the Zoom. So.
>
> And I've got those e-mails between me and Ms. Lofink. She wrote back to me on late Friday, and I got that Sunday, that she had not received the search warrants and the information I had requested from the Missoula detective. And she was asking to—what file specifically was Mr. Pettit asking for. So maybe Ms. Darnell could provide it.
>
> So we have not been provided that information that they're trying to use against us, and information we believe that we need to defend on that.

(*Id*. at 17-18.)

The district court said the petition and affidavit provided adequate notice for due process purposes but asked the State if there was evidence yet to be disclosed. (*Id*. at 18.) The State responded that it had provided Pettit with the police reports from Missoula that included what was found in the SnapChat and Google warrants. (*Id*. at 18-21.) The State continued, "Mr. van der Hagen did inquire about wanting some e-mails that his client claims occurred between himself and PO Darnell about

allowing him to go places where he shouldn't have been going. I responded, after speaking with PO Darnell, that those don't exist . . . that he was never given permission to go there." (*Id*. at 18-19.)

The district court said it was going to overrule the objection because Pettit could cross-examine Officer Darnell. (*Id*. at 19.) Pettit's counsel continued:

> MR. VAN DER HAGEN: Thank you. I just want to correct something or—
>
> THE COURT: Okay.
>
> MR. VAN DER HAGEN: —dispute something she says about advising me that those e-mails were provided to me. They have not been. And she did not tell me that—
>
> THE COURT: She didn't say that the e-mails were provided, she said that they don't exist.
>
> MR. VAN DER HAGEN: Exactly. And that's what I was just going to say. That [Officer] Darnell told her that they do not exist. And I have not been—I don't recall that being ever provided to me. And I'd leave it at that. Thank you.
>
> THE COURT: Okay. That, meaning—the "that" that was never provided is that the e-mails don't exist anymore?
>
> MR. VAN DER HAGEN: Well.
>
> THE COURT: I just want to make sure your record is clear.
>
> MS. LOFINK: They never existed.
>
> THE COURT: Okay. They never existed. Okay.

(*Id*. at 19-20.)

Pettit's counsel continued to discuss his prior email exchanges with the State. (*Id*. at 20-21.) He read an email he had received from the State in February 2024, which said, "I have not heard from the Missoula detective as for e-mails from his PO. What e-mails are you wanting? Likely easier for her to just produce those." (*Id*.) In response, the State read an email it had sent in October 2023 that informed Pettit's counsel that it had sent everything he had requested and specified "there are no e-mails allowing him to go to the mall. The only thing the PO provided in that regard was the below Chronos note where Pettit says he went to the mall to pay a bill." (*Id*. at 21.)

The district court ended this back and forth with the following:

> Okay. So. You know, I've heard enough of your e-mails between each other. I think due process has been provided. I think there's an opportunity. You know what the evidence is, and you have an opportunity to cross-examine Officer Darnell. So.

(*Id*. at 21.) The district court denied Pettit's motion. (*Id*.)

Officer Darnell concluded her direct examination by testifying that she did not believe Pettit could be adequately supervised in the community any longer, and she agreed with the State's recommendation to impose the remaining 12 years as a DOC commitment with no time suspended. (*Id*. at 22.) The State later made that recommendation. (*Id*. at 34-36.)

During cross-examination, Officer Darnell confirmed that she had discovered two unapproved cell phones in Pettit's van. (*Id*. at 24.) Officers from

the Missoula Police Department searched the phones and did not find any child porn or materials related to sexual assault or nudity of any child under the age of 18. (*Id*. at 24-26.) Pettit did not ask Officer Darnell about emails related to granting him permission to go to prohibited places. (*Id*.)

Pettit called two witnesses in his defense, and he did not testify. (*Id*. at 27-33.) Tyler Litchfield testified that he had served as Pettit's chaperone in February and April 2023. (*Id*. at 27-30.) He said that he and Pettit had taken walks at Playfair Park near Sentinel High School, but he had not known that Pettit was prohibited from going there. (*Id*.) Litchfield said that he had suggested they go to the park. (*Id*.) Tasha Talalotu testified that Pettit had worked for her for seven or eight months and he had been a "fine" employee. (*Id*. at 31-33.)

The district court revoked Pettit's suspended sentence and imposed a 12-year DOC commitment with no time suspended. (*Id*. at 42-43; Docs. 130, 132.) Pettit appealed. (Doc. 137.)

SUMMARY OF THE ARGUMENT

The district court correctly overruled Pettit's due process objection because the record contradicts his claim. A probationer's due process rights are limited, and the only applicable ground that Pettit has raised on appeal is that the State did not disclose the evidence against him. Pettit specifies that due process required the

State to disclose "emails, warrants, and extracted phone information." (Br. at 13.) But none of these items were evidence used against him. The record shows that the emails Pettit sought did not exist, the State disclosed the evidence obtained from the searches based on the warrants, and the extracted phone information did not support any violation of the conditions of his suspended sentence. Pettit attempts to impute to the district court a reliance on inappropriate information, but nothing in the record supports that conclusion or otherwise supports a due process violation.

The State disclosed to Pettit the evidence against him, and he has provided nothing to support his argument that he received an unfair proceeding in violation of due process. This Court should affirm the district court's revocation of Pettit's suspended sentence and the disposition imposed.

ARGUMENT

I. Standard of review

This Court exercises plenary review to determine whether a court has violated a probationer's right to due process. *State v. Macker*, 2014 MT 3, ¶ 8, 373 Mont. 199, 317 P.3d 150.

II. The district court correctly denied Pettit's due process objection.

A revocation hearing is not a criminal proceeding, so an offender is not entitled to the full spectrum of rights that applies to a criminal proceeding, and the

Montana Rules of Evidence do not apply. *Macker*, ¶ 9; *State v. Fetveit*, 2020 MT 264, ¶ 13, 401 Mont. 538, 474 P.3d 811. But a revocation proceeding is subject to the minimum requirements of due process. *Macker*, ¶ 9; *State v. Finley*, 2003 MT 239, ¶ 29, 317 Mont. 268, 77 P.3d 193 (citing U.S. Const. Amend. XIV and Mont. Const. art. II, § 17). "'What is needed is an informal hearing structured to assure that the finding of a parole [or probation] violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee's [or probationer's] behavior.'" *State v. Sebastian*, 2013 MT 347, ¶ 18, 372 Mont. 522, 313 P.3d 198 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972) (*bracketed text included in Sebastian*)).

The United States Supreme Court has set out "minimum requirements of due process" that an offender is entitled to at a revocation hearing:

> (a) written notice of the claimed violations of [probation or] parole; (b) disclosure to the [probationer or] parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board . . .; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking [probation or] parole.

Gagnon v. Scarpelli, 411 U.S. 778, 786 (1973) (quoting *Morrissey*, 408 U.S. at 489).

Pettit's only due process argument is that the State failed to disclose evidence against him. Specifically, he claims that the State did not provide "emails,

warrants, and extracted phone information." (Br. at 13.) The record contradicts Pettit's assertions that the State withheld information, and due process did not require disclosure of these asserted items because the State did not use any of it as "evidence against him." *See Gagnon*, 411 U.S. at 786.

The State could not disclose the emails that Pettit sought because they did not exist, and due process did not require the State to take further action. *See id*. Pursuant to Pettit's request, the State discussed the requested emails with Officer Darnell. Officer Darnell informed the State that she had never given Pettit permission to go to the prohibited places that supported his probation violations. The State made this clear in an email to Pettit's counsel prior to the disposition hearing and repeatedly reiterated it during the hearing. The record details Pettit's frustrations with his counsel regarding the efforts necessary to pursue the fictional emails, but those had nothing to do with the State's disclosure obligations and do not support a due process violation. *Id*.

Pettit's claim that the State failed to disclose information related to the warrants is contradicted by the record. The State repeatedly asserted it had provided all relevant information to Pettit and specifically said, "the defense has been provided the police reports from Missoula, which state what was found in those Snapchat and Google warrants." (2/5/24 Tr. at 18.) Pettit's entire argument is based on a mischaracterization by his counsel of an email he had received from the

State. But the State clarified any confusion this caused, and Pettit did not pursue it further. On appeal, Pettit merely argues that the State failed to disclose "warrants." (Br. at 15.) He does not attempt to explain why the evidence obtained from the warrants was insufficient, and due process only requires the State to disclose the "evidence against him," which it provided. *See Gagnon*, 411 U.S. at 786.

Pettit obliquely references the "extracted phone information," but he does not explain what information he sought to obtain that would have been relevant to his revocation. The State did not offer evidence of the content of any of Pettit's phones, including the monitored phone that the State referenced in count five of the revocation petition. The only references to phones were made by Officer Darnell during cross examination. In response to questions from Pettit's counsel, Officer Darnell confirmed that the State had discovered two unapproved phones in Pettit's van and that the State had not recovered any incriminating information from them. Pettit does not base his challenge on his undisputed possession of the two unauthorized devices, and the extracted phone information was not "evidence against him" that due process required the State to disclose. *See Gagnon*, 411 U.S. at 786.

Pettit argues there is no evidence in the record to suggest that the district court did not consider the dismissed allegations to support its sentence. (Br. at 15.) This argument is entirely based on assumption and does not support a due process

violation. The only applicable authority that Pettit has provided shows that a limited due process right exists in revocation proceedings and it requires a fair process, which he received. *See* U.S. Const. Amend. XIV, § 1; *Gagnon*, 411 U.S. at 782; *Sebastian*, ¶ 17; *State v. Pedersen*, 2003 MT 315, ¶¶ 20-21, 318 Mont. 262, 80 P.3d 79; *Finley*, ¶ 29.

The remaining authority does not support a due process violation in this case. Nothing in the record shows the State relied on misinformation to support its sentencing recommendation or that the district court relied on misinformation to support its sentence. *See State v. Walker*, 2007 MT 205, ¶¶ 20-23, 338 Mont. 529, 167 P.3d 879 (affirming a sentence when no evidence in the record rebutted information in the PSI); *Townsend v. Burke*, 334 U.S. 736, 740-41 (1948) (a sentence based on materially untrue information violated due process). Moreover, these cases address original sentencing proceedings, not the limited due process rights that apply to a probationer during a revocation proceeding. *Id.*

As the district court correctly found below, Pettit received a detailed petition to revoke his suspended sentence, and he provided no facts to support his objection that the State withheld evidence against him or otherwise violated his due process rights. *See Gagnon*, 411 U.S. at 786.

CONCLUSION

The State respectfully requests this Court affirm the revocation of Pettit's suspended sentence and the disposition imposed.

Respectfully submitted this 20th 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 principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 5,153 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Brad Fjeldheim
BRAD FJELDHEIM

CERTIFICATE OF SERVICE

I, Brad Fjeldheim, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-20-2025:

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Electronically signed by LaRay Jenks on behalf of Brad Fjeldheim
Dated: 08-20-2025