

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0137

---

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DAVID WARREN LAMBERT,

Defendant and Appellant.

---

**APPELLANT'S REPLY BRIEF**

---

On Appeal from the Montana Ninth Judicial District Court of Pondera County,  
the Honorable Greg Bonilla, Presiding

---

APPEARANCES:

JAMES C. MURNION  
Contract Counsel for the  
Office of the State Public Defender  
Appellate Defender Division  
MURNION LAW  
415 N. Higgins Ave.  
Missoula, MT 59802  
james@murnionlaw.com  
(406) 282-1857

AUSTIN MILES KNUDSON  
Montana Attorney General  
ROY BROWN  
Assistant Attorney General  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401  
406-444-2026  
roy.brown2@mt.gov

ATTORNEY FOR DEFENDANT  
AND APPELLANT

SHARI LENNON  
Pondera County Attorney  
20 4th Ave. SW, Suite 315  
Conrad, MT 59625-2342  
countyattorney@ponderacounty.org

ATTORNEYS FOR PLAINTIFF  
AND APPELLEE

**1. *Fry* establishes that Lambert had a right to counsel at his probation revocation resentencing hearing.**

This Court’s words in *State v. Fry* could not be any clearer: “**A defendant is entitled to assistance of counsel, either retained or appointed, at a hearing on revocation of probation and resentencing.** Unless the record reflects a valid waiver of the right to counsel, a lawyer must be afforded at a sentencing hearing regardless of whether the hearing is labeled a revocation of probation or a deferred sentencing.” 197 Mont. 354, 357, 642 P.2d 1053, 1054 (1982) (emphasis added). Nevertheless, the State appears to take the position the Court didn’t really mean what it said, and defendants facing revocation of probation aren’t always entitled to assistance of counsel. But *Fry* has never been overruled and is still good law today. Moreover, Section 46-18-203, MCA, requires the judge to inform a defendant facing revocation that they have “the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.”<sup>1</sup> There can be no doubt that Lambert had a right to counsel at his probation revocation resentencing hearing (regardless of what constitutional or statutory provision(s) such right derives from).

///

///

---

<sup>1</sup> Why would a court be required to inform a defendant facing revocation they are entitled to legal representation if they did not actually have that right?

## **2. Lambert did not validly waive his right to counsel.**

Section 46-8-102, MCA, states “A defendant may waive the right to counsel when the court ascertains that the waiver is made knowingly, voluntarily, and intelligently.” The fundamental problem with this case is the record does not support a finding that Lambert knowingly, voluntarily, and intelligently waived his right to counsel. The trial court did not make such a finding, nor did it even make an inquiry that Lambert was intending to waive his right to counsel. Rather, Lambert wanted to find private counsel to replace his appointed public defender, tried to do so but was unsuccessful, and then asked for a public defender to be reappointed. There was no allegation or evidence and certainly no court finding that Lambert was being dilatory or acting in bad faith in his search for counsel. Nevertheless, the trial court refused to reappoint a public defender and forced Lambert to proceed pro se.

## **3. *Lange* applied a version of Section 46-8-104 no longer in effect today.**

The State relies heavily on *State v. Lange* for its argument that the trial court has discretion to permit a defendant facing revocation the assistance of counsel or not. 226 Mont. 9, 733 P.2d 846 (1987). True, the *Lange* Court did find a trial court had discretion to decide whether a defendant should be afforded counsel or not, but that ruling relied on Montana Code Annotated Section 46-8-104, which, at that time, stated the court “*may* assign counsel to any defendant in any ‘post-conviction

criminal action or proceeding if he desires counsel and is unable to employ counsel.” *Id.* at 12, 733 P.2d at 849. However, in 2007, the Montana Legislature explicitly amended Section 46-8-104 to apply only to post-conviction proceedings brought under Title 46, Chapter 21 (petitions for post-conviction relief). Mont. Code Ann. § 46-8-104 (2007); 2007 Mt. SB 379. The legislature thus clarified that Section 46-8-104 applied *only* to petitions for post-conviction relief, not *any* post-conviction proceeding—like a petition to revoke a suspended sentence. As such, the Court’s reasoning in *Lange* is no longer valid today to the extent it relies on an outdated version of Section 46-8-104, MCA.

**4. *Lange* is readily distinguishable.**

The facts here are markedly different than *Lange*, where the defendant repeatedly sought to substitute his appointed public defender for another public defender and was repeatedly denied by the trial court. 226 Mont. at 11, 733 P.2d at 848. At the revocation hearing, Lange’s appointed counsel was present, but Lange chose to proceed pro se instead of through his appointed counsel. *Id.* The *Lange* Court noted that the right to counsel does not mean a “right to the appointment of counsel of his choice.” *Id.* at 13, 733 P.2d at 849. “By rejecting court-appointed counsel for the revocation hearing, Lange effectively opted to proceed pro se without assistance of counsel.” *Id.* Unlike *Lange*, where the defendant had a court appointed lawyer present but chose to proceed pro se after the court denied his

request for a different appointed lawyer, here, Lambert had no lawyer present, specifically asked that one be appointed, but was forced to proceed pro se. Nothing about this demonstrates that Lambert knowingly, voluntarily, and intelligently waived his right to counsel.

### **5. Prejudice is obvious from the record.**

State argues Lambert cannot prove prejudice because he admitted to one probation violation and “The district court’s decision to revoke Lambert’s suspended sentence at the time was based on the violation Lambert admitted to.” (Appellee’s Br. 15 (citing *See* 3/20/23 Tr. at 7–8).) True, Lambert had admitted to one violation at a hearing with his then-appointed counsel, but the State ignores that Lambert unwittingly admitted to two additional violations at his disposition hearing after being denied counsel. (May 15, 2023 Disp. Hr’g Tr. at 8:24–9:16.) The State also ignores that the district court based its resentencing on Lambert’s “admission of the violation of several conditions[.]” (May 15, 2023 Disp. Hr’g Tr. at 9:23–24 (emphasis added).) The record is clear: Lambert was prejudiced when the trial court resentenced him based on admissions made at the disposition hearing without the benefit of, and after being denied his request for, appointed counsel. At the same time, Lambert maintains that structural error is the appropriate standard here because denial of the right to counsel at a hearing depriving him of his liberty

is so fundamentally and deeply incompatible with due process<sup>2</sup> that no further analysis is required.

**6. The State improperly invites this Court to accept unproven allegations as facts.**

Lambert made one admission at the trial court: he did not register as a sexual offender as required:

THE COURT: Ok. The State of Montana alleged you violated Probation Condition number, laws and conduct, which required you to obey all laws of any city, county, state laws; conduct yourself as a good citizen; report any, um, contact with law enforcement officers within 72 hours; and be cooperative and truthful in all your communications and dealings with your probation and parole officers, and any law enforcement agency.

It's alleged that you were required to register as a sexual offender and you did not register as required, and you were charged with failing to register as a sex offender, a felony. Do you admit or deny that allegation?

MR. DAVID LAMBERT: I admit that.

The State did not seek to prove any of the other alleged probation violations, all of which remain unproven today and denied by Mr. Lambert. Nevertheless, the State now asks the Court to rely on and accept as true one of these unproven, alleged violations. (Appellee's Br. 24–25.) Respectfully, the Court should decline to do so.

---

<sup>2</sup> The State claims Lambert failed to assert a due process claim, but Lambert's opening brief stated "Due process protections for a revocation hearing are codified in § 46-18-203, MCA, which provides, in pertinent part: . . . the right to be represented by counsel at the revocation hearing[.]" (Appellant's Opening Br. 9 (quoting *State v. Triplett*, 2008 MT 360, ¶ 17, 346 Mont. 383, 195 P.3d 819).)

Respectfully submitted this 26nd of August, 2025.

MURNION LAW

By: /s/ James C. Murnion  
JAMES C. MURNION

ATTORNEY FOR APPELLANT  
AND DEFENDANT

## **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 typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material, if any, the caption page, and the signature blocks; and the word count calculated by Microsoft Word for Windows is 1,390, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ James C. Murnion  
JAMES C. MURNION

## CERTIFICATE OF SERVICE

I, James Clarke Murnion, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 08-26-2025:

Shari M. Lennon (Govt Attorney)  
20 4th Ave SW  
Ste 315  
Conrad MT 59425  
Representing: State of Montana  
Service Method: eService

Roy Lindsay Brown (Govt Attorney)  
Appellate Services Bureau  
Attorney General's Office  
215 N Sanders St  
P.O. Box 201401  
Helena MT 59601  
Representing: State of Montana  
Service Method: eService

Electronically Signed By: James Clarke Murnion  
Dated: 08-26-2025