IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0414

WESLEY THOMAS COOPER,

Petitioner and Appellant,

v.

MONTANA DEPARTMENT OF JUSTICE,
DIVISION OF CRIMINAL INVESTIGATION,

Respondent and Appellee.

BRIEF OF APPELLEE

On Appeal from the Montana Nineteenth Judicial District Court,
Lincoln County, The Honorable Matthew J. Cuffe, Presiding

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STATEMENT OF THE ISSUES

1. Whether the court correctly denied Appellant's Petition for a Writ of Prohibition based on the conclusion that it is not the proper remedy for relief from the duty to register as a sexual offender in Montana.

2. Whether the court erred in ordering Appellant to register as a sexual offender in Montana after considering the parties' ages in the reasonable equivalency analysis between North Dakota's and Montana's sexual assault statutes.

STATEMENT OF THE CASE

The Montana Department of Justice, Division of Criminal Investigation, Sexual and Violent Offender Registry Unit (the State) sent notice to Appellant Wesley Cooper (Cooper) that based on his prior Sexual Assault conviction in North Dakota he has the duty to register as a sexual offender in Montana. Cooper filed a Writ of Prohibition Application in the Nineteenth Judicial District Court, Lincoln County, seeking to prohibit the State from requiring him to register as a sexual offender in Montana. Cooper argued he did not meet the statutory criteria for registering as a sexual offender and that he does not have the duty to register in North Dakota. A hearing was held and the district court denied Cooper's Writ of Prohibition and ordered him to register as a sexual offender based on the reasonable equivalency between North Dakota's and Montana's sexual assault statutes.

On appeal, Cooper challenges the court's denial of the Writ of Prohibition and the court's reasonable equivalency determination.

STATEMENT OF THE FACTS

Cooper was charged with Gross Sexual Imposition, a Class AA felony, in violation of N.D. Cent. Code § 12.1-20-03(1)(d) in North Dakota on October 20, 2017. (Appellant's App. B.) Cooper was an adult over the age of 22 at the time of the offense and the victim's date of birth was in the year 2013. (*Id.*)

Cooper plead guilty to the amended offense of Sexual Assault, a Misdemeanor A, in violation of 2019 N.D. Cent. Code § 12.1-20-07 on July 23, 2019. (Appellant's App. C.) No Amended Information was filed. (2/14/25 Tr. at 7.) The Plea Agreement did not state that the Jane Doe listed in the charging documents was a different individual than the Jane Doe referenced in the factual basis. (Appellant's App. C at 1,) The Plea Agreement indicated Cooper was not required to register as a sexual offender in North Dakota pursuant to 2019 N.D. Cent. Code § 12.1-32-15(1)(g). (*Id*. at 2.) The factual basis in the Plea Agreement states, "[i] am pleading guilty because on, about, or between October 1, 2016, and April 30, 2017, in the County of Williams, State of North Dakota, I had inappropriate contact with Jane Doe and had reasonable cause to believe that the contact was offensive to that person." (*Id*. at 1.)

Cooper subsequently moved from North Dakota to Eureka, Montana, and was advised of his duty to register as a sexual offender by the State on October 16, 2024, following a reasonable equivalency analysis pursuant to Mont. Code Ann. § 46-23-502(9)(b) (2019).[1] (Appellant's App. E.)

Cooper filed an Application for a Writ of Prohibition in district court, claiming that he has "no other plain, speedy or adequate remedy at law to address this issue." (Respondent's App. A at 2.) Cooper stated that because he is not currently on probation and has no criminal case in Montana, he could not challenge the State's registration requirement without filing a Writ of Prohibition. (*Id*. at 4.) The basis for Cooper's Writ of Prohibition was that he does not meet the statutory criteria for registering as a sexual offender in Montana because the parties' ages should not be considered in the reasonable equivalency analysis. (*Id*. at 5-8.)

Cooper examined whether North Dakota's sexual assault statute was reasonably equivalent to sexual assault in Montana. (*Id*.). Cooper conceded that the two statutes are reasonably equivalent. (Appellant's App. D at 2.) Cooper argued the State's reasonable equivalency analysis should not have progressed beyond the elements to consider the parties' ages. (Respondent's App. A at 7.) Cooper asserted the factual basis in his Plea Agreement did not state the identity nor age of his

[1] Cooper is subject to the 2019 SVORA pursuant to *State v. Hinman*, 2023 MT 116, 412 Mont. 434, 530 P.3d 1271.

victim and, therefore, the State may not consider whether the victim was under 16. (*Id*.) Cooper contended that considering the parties' ages would only be permitted if the State was comparing North Dakota's Gross Sexual Imposition statute to Montana law because it specifically includes a victim under 15 as an element of the offense. (*Id*. at 7-8.)

The State responded that a Writ of Prohibition was not appropriate because the proper remedy for removal from the Sexual and Violent Offender Registry is to petition for relief pursuant to Mont. Code Ann. § 46-23-506 of the Sexual and Violent Offender Registry Act (SVORA). (Respondent's App. B at 2.) The State argued Cooper is subject to the duty to register in Montana because North Dakota's sexual assault statute is reasonably equivalent to Montana's sexual assault statute based on similar elements; including knowledge, sexual contact, and the offensive nature of the contact. (*Id*. at 4-5.) The State conducted a reasonable equivalency analysis of both statutes on their face, going through each element and their statutory definitions. (*Id*.) The State did not conduct a reasonable equivalency analysis of North Dakota's Gross Sexual Imposition statute because Cooper was not convicted of that offense.

The State outlined that Montana's sexual assault statute is not defined as a sexual offense unless the victim is under 16 and the offender is 3 or more years older than the victim, or if the victim is receiving psychotherapy services from the

offender.[2] (*Id*. at 6-7.) The State explained that the parties' ages are not disputable facts and are permitted by Mont. Code Ann. § 46-23-502 (2019) to be considered in ascertaining whether a conviction is defined as a sexual offense requiring registration. (*Id*.) The State analyzed *State v. Scott* in determining what factors may be considered when verifying whether an offense is sexual. (*Id*. at 8.) In *Scott*, the Montana Supreme Court considered whether the federal offense of Bank Robbery was reasonably equivalent to Montana's robbery statute for stacking purposes as a Persistent Felony Offender. *State v. Scott*, 2020 MT 178, 400 Mont. 394, 467 P.3d 595. The State maintained that in line with the Court's holding in *Scott*, it was the State's responsibility to establish that the conviction would be considered a sexual offense had it been committed in Montana. (Respondent's App. B at 8-10.) The State reasoned the Montana Legislature established a specific carve-out provision for sexual assaults committed against children under age 16 by an offender 3 or more years older, so it would be remiss to ignore the parties' ages when conducting a reasonable equivalency analysis. (*Id*.)

The State further insisted the parties' ages must be considered in a reasonable equivalency analysis as occasionally it *exempts* individuals from the

[2] Sexual Assault (third or subsequent offense) was not included as a defined sexual offense under Mont. Code Ann. § 46-23-502 until 2023.

duty to register—for instance, if the victim had been over the age of 16 in Cooper's case, he would not be required to register in Montana. (*Id*.)

A hearing was held and Cooper testified as follows on direct examination by his counsel:

> Q. Mr. Cooper, obviously, you were originally charged with a charge of gross sexual imposition in this case. Is that correct?
>
> A. Yes, sir.
>
> Q. And did you enter a plea to that charge?
>
> A. No.
>
> Q. You didn't plead not guilty to that charge?
>
> A. Yeah, I plead not guilty, yes.
>
> Q. In regards, uh, to the allegation that was, um, that you had sexual intercourse with—with your minor daughter, correct?
>
> A. Yeah.
>
> Q. And at any time, did you ever admit that allegation?
>
> A. No.
>
> Q. And then eventually the State came up with an offer, uh, to resolve the case with a sexual assault charge. Is that correct?
>
> A. Yes.
>
> Q. Okay. And as part of you agreeing to that plea agreement, uh, did any part of that include admitted any type of inappropriate sexual contact with your daughter?
>
> A. No.

Q. And in the plea agreement they just had the term Jane Doe in that plea agreement. Does that really reference anyone in particular?

A. No.

(2/14/25 Tr. at 12-14.)

On cross-examination, counsel for the State examined Cooper as follows:

Q. Mr. Cooper, do you dispute that the victim in the offense that you were convicted of was under the age of 16?

A. There's—my plea agreement states exactly what it is—

Q. Okay.

A. —so.

Q. Do you dispute that the victim of that offense that you were convicted of was under sixteen?

A. There's no victim to be had on what I agreed to.

The Court: It says Jane Doe in your pleading agreement. Answer her question.

A. I—I—

The Court: Do you dispute that Jane Doe was under sixteen? Your plea agreement says, "I had inappropriate contact with Jane Doe."

A. Yes, I dispute that.

Q. Okay. Is it your testimony that there is a different victim of the offense that you were convicted of than the original complaint? Are we talking about two victims here?

A. There's no victim actually described in the plea deal that I took.

Q. Is it your testimony that Jane Doe is not the same person as the victim from the original complaint?

A. No, that's stated—there's—Jane Doe is not stated who that is.

Q. Do you dispute your age at the time of the offense?

A. My age? Of what offense?

Q. The one you were convicted of.

A. The plea agreement?

Q. Yeah.

A. No. It was two years after the original accusations. I would've been twenty-sevenish.

Q. So around twenty-five at the time of the offense?

A. Alleged offense. Yes.

Q. The offense that you were convicted of—are—do you dispute the fact that you were convicted?

A. No. I—I have a piece of paper that says exactly what it says on what I was convicted of.

Q. Okay. So, you would have been around twenty-five?

A. Yes.

(*Id*. at 14-16.)

The district court then questioned Cooper as follows:

Q. All right. You've seen the complaint in this case. Is that right, Mr. Cooper?

A. Yes, sir.

Q. The original complaint that charged you with a felony. Correct?

A. Yes.

Q. And you understand that the victim in that was identified as Jane Doe. Correct?

A. In the original?

Q. Yep.

A. Um, my plea agreement is a Jane Doe.

Q. No, no, no. I want you to listen very carefully to the question that I'm asking you. The original complaint that charged you with a felony identified the victim as Jane Doe. Correct? Do you know?

A. Um, I don't have it in front of me to see that, but I plead not guilty to . . .

Q. If you don't know, then you can say, "I don't know."

A. I don't know.

Q. Okay. It's fair for me to rely on the complaint then, correct?

A. Um, I—I don't know.

Q. All right. If the complaint identifies a Jane Doe and there is a Jane Doe identified in the plea agreement, would that be the same person, or do you know?

A. I—I—as far as actual terminology on that stuff, I don't know.

(*Id*. at 16-18).

The district court issued an order denying Cooper's Writ of Prohibition, finding the proper procedure for removal from the sexual offender registry is to

petition for relief. (Appellant's App. A at 2.) The district court further held Cooper has the duty to register as a sexual offender because the State may include the parties' ages in its reasonable equivalency analysis to determine whether a conviction is a sexual offense. (*Id*. at 2-6.)

SUMMARY OF THE ARGUMENT

The district court correctly denied Cooper's Writ of Prohibition because there is an adequate remedy in the ordinary course of law when an individual seeks removal from the sexual offender registry, namely a petition for relief pursuant to Mont. Code Ann. § 46-23-506.

The district court did not abuse its discretion in ordering Cooper to register as a sexual offender because it was not erroneous to consider the parties' ages in verifying whether a sexual assault conviction qualified as a sexual offense under Mont. Code Ann. § 46-23-502.

ARGUMENT

I. Standard of review

"A district court's decision to issue or deny a writ of prohibition is a conclusion of law regarding the application of a statute, which we review for correctness." *Victory Ins. Co. v. Downing*, 2023 MT 139, 413 Mont. 80, 83-84,

532 P.3d 850, 853 (citing *Allied Waste Servs. of N. Am., LLC v. Mont. Dep't of Pub. Serv. Regulation*, 2019 MT 199, ¶ 12, 397 Mont. 85, 447 P.3d 463).

"A district court's interpretation and application of a statute and its conclusions of law are reviewed for correctness." *Langford v. State*, 2013 MT 265, ¶ 10, 372 Mont. 14, 309 P.3d 993 (citing *In re C.D.H.*, 2009 MT 8, ¶ 21, 349 Mont. 1, 201 P.3d 126).

"As with designation of a sexual offender level, a district court must exercise considerable discretion in determining whether to grant or deny relief from registration. Accordingly, the standard of review is whether the district court abused its discretion in granting or denying the petition. This Court will not disturb a discretionary decision of a district court absent an abuse of that discretion." (*Id*. (internal citations omitted).)

"A district court abuses its discretion when it acts arbitrarily without employment of conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. Further, a district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." (*Id*. (internal citations omitted).)

Cooper argues this Court should review the district court's denial of his Writ of Prohibition for correctness but that Cooper's duty to register should be reviewed

de novo. Cooper posits the imposition of the duty to register is a sentence enhancement since the post-2007 SVORA is considered punitive.

Although Cooper failed to file a petition for relief in district court, this Court should still review the district court's ultimate conclusion (that is, whether Cooper should be relieved of the duty to register) as if he had followed proper procedure. Therefore, the district court's decision against relieving Cooper from the duty to register should be reviewed for abuse of discretion.

II. The district court did not err when it denied Cooper's Writ of Prohibition.

"A writ of prohibition under § 27-27-101, MCA, 'arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions . . . .' To exercise our original jurisdiction under prohibition, we require a showing that the proceedings sought to be prohibited are 'clearly unlawful.'" *Granger v. Huss*, 377 Mont. 435, 348 P.3d 171 (2014) (citing *Bitterroot River Protection Assoc., Inc. v. Bitterroot Conservation District*, 2002 MT 66, ¶ 9, 309 Mont. 207, 45 P.3d 24).

"A writ of prohibition may be issued . . . in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law." Mont. Code Ann. § 27-27-102.

"A writ of prohibition 'is justified only by extreme necessity, when the grievance cannot be redressed by ordinary proceedings at law, or in equity, or by

appeal.' The existence of another remedy, even if inconvenient and indirect, prevents a party from seeking a writ of prohibition." *Bitterroot River Prot. Ass'n, Inc.*, ¶ 22 (internal citations omitted).

"This Court has expressed its strong disinclination to grant writs of prohibition. 'The writ of prohibition is not favored by the courts. Necessity alone justifies it.'" *Kimble Properties. v. Department of State Lands*, 231 Mont. 54, 56, 750 P.2d 1095, 1096 (1988) (citing *Malta Irrigation District v. Montana Board of Health and Environmental Sciences*, [224 Mont. 376,] 729 P.2d 1323, 1326 (Mont. 1986) (quoting *State ex rel. Morse v. Justice Court*, 192 Mont. 95, 626 P.2d 836, 837 (1981)).

"'Sexual offense' means: any violation of or attempt, solicitation, or conspiracy to commit a violation of . . . 45-5-502(3) (if the victim is less than 16 years of age and the offender is 3 or more years older than the victim)." Mont. Code Ann. § 46-23-502(9)(a) (2019). Sexual offenses also include "any violation of a law of another state . . . that is reasonably equivalent to a violation listed in subsection (9)(a) or for which the offender was required to register as a sexual offender after an adjudication or conviction). Mont. Code Ann. § 46-23-502(9)(b) (2019).

"Since the enactment of the Act in 1989, sexual offenders convicted in other jurisdictions have been required to register for offenses that are reasonably equivalent to Montana offenses listed in § 46-23-502(6)(a), MCA. Section 2,

Ch. 293, L.1989." *State v. Hamilton*, 2007 MT 167, ¶ 9, 338 Mont. 142, 164 P.3d 884.

Petitions for relief from the duty to register as a sexual offender may be filed in district court. Mont. Code Ann. § 46-23-506(3) (2019). A district court reviews a sexual offender's duty to register and has discretion whether to grant their petition for relief. Mont. Code Ann. § 46-23-506(3)(b) (2019).

The district court correctly denied Cooper's petition for a Writ of Prohibition because a writ is an extraordinary remedy when another adequate remedy does not exist. The State has statutory authority to review out-of-state convictions to determine whether they are reasonably equivalent to Montana offenses that require registration. If the offenses are reasonably equivalent, the offender is notified of their duty to register. Sexual offenders have statutory authority to petition a district court for relief from the duty to register.

While Montana law does not yet outline a specific procedure for challenging the duty to register as an offender moving to our state, it does not follow that there is no plain, speedy, or adequate remedy available. An offender who challenges their duty to register based on reasonable equivalency can petition their local district court for relief. Just as in the instant case, the district court can hold a hearing to discern whether registration was required. Similarly, an offender who is cited for Failure to Register as a Sexual Offender in violation of Mont. Code Ann.

§ 46-23-507 can file a motion to dismiss challenging their duty to register. If an offender disagrees with the district court's conclusion following a hearing on their petition for relief or denial of their motion to dismiss, they can appeal.

Neither the State nor the district court exceeded their jurisdictional bounds in determining that Cooper has the duty to register as a sexual offender based on reasonable equivalency of the two sexual assault statutes. Cooper failed to establish the extreme necessity that would warrant a Writ of Prohibition and the district court correctly refused to grant it.

III. The district court did not err in ordering that Cooper has the duty to register as a sexual offender in Montana.

Courts utilize a categorical approach when considering prior convictions at sentencing to determine whether an enhancement applies. *Taylor v. United States*, 495 U.S. 575 (1990). In *Taylor,* the United States Supreme Court utilized the elements-only categorical approach in the context of determining predicate violent offenses under the Armed Career Criminal Act. (*Id*.) In *Descamps v. United States*, the United States Supreme Court held that the "modified categorical approach"—where a court may consider a limited number of charging documents and/or the plea agreement—may not be used when the defendant is convicted under an "indivisible" statute (a statute without alternative elements) in the context of the Armed Career Criminal Act. *Descamps v. United States*, 570 U.S. 254 (2013).

The categorical approach is also employed when determining the appropriate tier classification of a sexual offender. *United States v. Ballantyne*, No. CR 19-42-BLG-SPW, 2019 U.S. Dist. LEXIS 140130 (D. Mont. Aug. 19, 2019). In *Ballantyne*, the defendant was convicted of a sexual offense in Colorado and was later prosecuted federally for failing to register as a sexual offender under the Sexual Offender Registration and Notification Act (SORNA). (*Id*. at *2.) The duration of Ballantyne's duty to register depended on his SORNA tier designation. (*Id*. at *2-3.) SORNA tier designation depends on the severity of the sexual offense. (*Id*.) The United States District Court compared Ballantyne's Colorado conviction to its potential federal counterparts under the categorical approach to determine the appropriate tier classification. (*Id* at **3-4.)

> The federal offense the government contends is "comparable" to Ballantyne's prior offense is either Abusive Sexual Contact against a minor under the age of 13 (tier three) or Abusive Sexual Contact (tier two). Because both offenses are premised on the crime of Abusive Sexual Contact, the parties agree the Court should compare Second Degree Sexual Assault with the federal crime of Abusive Sexual Contact. If the crimes categorically match, the Court should then use the age of the victim to determine whether Ballantyne is a tier two or a tier three. *United States v. Mi Kyung Byun*, 539 F.3d 982, 993 (9th Cir. 2008).

(*Id*.)

"The Ninth Circuit takes a 'non-categorical' approach to determining the age of the victim and examines the underlying facts of an offense, rather than just the elements of the crime of conviction, when determining whether the offense

involved 'conduct that by its nature is a sex offense against a minor.'" *United States v. Kent*, 440 F. App'x 580, 582 (9th Cir. 2011) (citing *Byun,* 539 F.3d at 992). In *Byun*, the Ninth Circuit Court of Appeals analyzed whether a victim's age can be considered when it is not an element of the offense for purposes of SORNA, finding "the best reading of the statutory structure and language is that Congress contemplated a non-categorical approach as to the age of the victim in determining whether a particular conviction is for a 'specified offense against a minor.'" *Byun*, 539 F.3d at 992-93.

"The legislative history of the statute fully supports this conclusion. This history shows that Congress intended to include all individuals who commit sex crimes against minors, not only those who were convicted under a statute having the age of the victim as an element." (*Id*.)

The Eleventh Circuit Court of Appeals relied on *Byun* in *United States v. Dodge*, going even further to find the underlying conduct may be considered in examining whether a federal offense (obscenity) would fall under SORNA's purview: "[a]lthough the Ninth Circuit focused only on the age of the victim, its approach supports our conclusion that SORNA permits examination of the defendant's underlying conduct—and not just the elements of the conviction statute—in determining what constitutes a 'specified offense against a minor.'" *United States v. Dodge*, 597 F.3d 1347, 1354 (11th Cir. 2010).

In passing SORNA:

> Congress left courts with broad discretion to determine what conduct is "by its nature" a sex offense. Indeed, Congress's stated purpose was to capture a wider range of conduct in its definition of a "sex offense," and specifically *all offenses*—not just convictions—of child predators. The language of SORNA discloses that in some situations a sexual act might not even be the prerequisite to a registerable "sex offense." The key is conduct that contains a "sexual component" toward a minor. Our review of the language of SORNA confirms our conclusion that Congress cast a wide net to ensnare as many offenses against children as possible.

(*Id*. at 1355).

Under SORNA, "[e]ach jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this subchapter." 34 U.S.C.S. § 20912(a). Montana's Sexual and Violent Offender Registration Act is codified at Mont. Code Ann. §§ 46-23-501 through -520.

> Under Montana law, sexual assault is committed when "[a] person . . . knowingly subjects another person to any sexual contact without consent . . . ." Section 45-5-502(1), MCA (2001). "Sexual contact" includes touching of the genital parts of another "directly or through clothing, in order to knowingly or purposely: (a) cause bodily injury to or humiliate, harass, or degrade another; or (b) arouse or gratify the sexual response or desire of either party." Section 45-2-101(66)(a)-(b), MCA (2001). If the victim is less than 16 years old and the offender is 3 or more years older than the victim, the offender is subject to a heightened punishment, *see* § 45-5-502(3), MCA (2001), and is required to register under SVORA. *See* § 46-23-502(9)(a), MCA. Consent is ineffective if "the victim is less than 14 years old and the offender is 3 or more years older than the victim." Section 45-5-502(5)(b), MCA (2001).

United States v. Juvenile Male, 2011 MT 104, ¶ 14, 360 Mont. 317, 255 P.3d 110.

North Dakota's Sexual Assault statute is codified at N.D. Cent. Code § 12.1-20-07 and Cooper was convicted under subsection (1)(a) which provides: "A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if: a. That person knows or has reasonable cause to believe that the contact is offensive to the other person."

North Dakota defines "knowingly" as "if, when he engages in the conduct, he knows or has a firm belief, unaccompanied by substantial doubt, that he is doing so, whether or not it is his purpose to do so." N.D. Cent. Code § 12.1-02(1)(b) (2019).

Here, the court deduced from the briefing, pleadings, and hearing that the victim was under age 16 and Cooper was 3 or more years older than her at the time of the offense. Cooper had the opportunity to dispute those findings during the hearing and indeed did so on cross-examination.

Cooper asserts on appeal that this Court should adopt a categorical or modified categorical approach in determining whether Cooper's offense qualifies as a sexual offense in Montana and thus would be barred from considering the parties' ages. Cooper conceded to the district court that North Dakota's sexual assault statute is reasonably equivalent to Montana's (Appellant's App. D at 2) but pivoted on appeal to argue "they are not remotely, let alone reasonably, equivalent." (Appellant's Br. at 11.)

The district court concluded North Dakota's sexual assault statute was reasonably equivalent to Montana's sexual assault statute based on the elements and then was tasked with verifying whether Cooper would have the duty to register by definition. Consistent with the approach utilized in *Byun*, the court found the two statutes categorically matched and only then considered the parties' ages to determine whether registration was required. The court accepted Cooper's age as he stipulated on cross-examination and the victim's age from the pleadings and Cooper's plea agreement.

The definitions of sexual and violent offenses in Montana contain many caveats. An offender who commits the offense of Unlawful Restraint in violation of Mont. Code Ann. § 45-5-301 is only required to register as a sexual offender if the victim is less than 18 years of age and the offender is not a parent of the victim. Mont. Code Ann. § 46-23-502(9)(a) (2019). The Unlawful Restraint statute does not include the ages of the parties as an element, but indeed their ages must be considered when determining whether the convicted has the duty to register. To convict an offender of Sexual Assault in violation of Mont. Code Ann. § 45-5-502, the factfinder must find the defendant knowingly subjected another to any nonconsensual sexual contact. The parties' ages are not an element but must be established for the sentencing enhancement and are otherwise purely factual

criteria to determine whether the conviction meets the statutory definition of "sexual offense."

Similarly, the State would also need to consider whether an offender had two or more prior Partner or Family Member Assault (PFMA) convictions before determining whether a PFMA conviction qualified as a violent offense requiring registration. Mont. Code Ann. § 45-5-502. While it is true the State facially considers each statute for reasonable equivalency, it is also true Montana law mandates that other factors be considered before an offense can be defined as a sexual or violent offense. Many times, a statute may be reasonably equivalent on its face but does not require registration in Montana. Here, if Cooper's victim had been over 16, he would not be required to register for a misdemeanor sexual assault conviction. Notably, the district court did not go as far as the *Dodge* court in that it did not consider the underlying *conduct* outlined in Cooper's charging documents, nor did the State during its reasonable equivalency analysis.

Both North Dakota and Montana provide for misdemeanor sexual assault offenses that are exempt from the duty to register. Montana's sexual assault statute offers a carve-out provision that accounts for the parties' ages, and the Legislature has mandated that those parameters equate to a sexual offense requiring registration. The fact Cooper is not required to register in North Dakota has no bearing on his duty to register in Montana. Registration requirements vary by state

and requiring statutes to be identical in order to be reasonably equivalent would frustrate the purpose of sexual offender registries.

Cooper may have since changed his mind about whether North Dakota's sexual assault statute is reasonably equivalent to Montana's and did not concede the victim's age at the hearing, but the district court did not abuse its discretion in considering the parties' ages in finding that Cooper has the duty to register as a sexual offender in Montana.

CONCLUSION

The district court's denial of Cooper's Writ of Prohibition should be affirmed because an extraordinary writ is not the proper remedy for relief from the duty to register as a sexual offender in Montana. The district court's holding that Cooper has the duty to register should be affirmed because the court did not abuse its discretion in finding the two sexual assault statutes were reasonably equivalent.

Respectfully submitted this 5th day of September, 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 4,998 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Caitlin S. Williams
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CERTIFICATE OF SERVICE

I, Caitlin Schwinden Williams, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-05-2025:

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