IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0732

STATE OF MONTANA,

Plaintiff and Appellee,

v.

KATIE IRENE GARDING,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Fourth Judicial District Court,
Missoula County, The Honorable John W. Larson, Presiding

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STATEMENT OF THE ISSUES

1. Whether the Missoula District Court erred when it reinstated and resumed Appellant's sentence after the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) reversed the federal district court's grant of federal habeas relief.

2. Whether any alleged right to substitute the judge for retrial extinguished upon the Ninth Circuit's reversal and the cancellation of the retrial. Alternatively—when the parties stipulated to delaying retrial proceedings pending the Ninth Circuit appeal's conclusion, and Appellant only filed a provisional motion to substitute the judge in case a re-arraignment occurred, which never happened—whether Appellant triggered any right to substitute the judge under the arraignment substitution provision in Mont. Code Ann. § 3-1-804(1)(b).

3. Whether Appellant has shown constitutional error based on her theory that the district court "reconvicted" her via a "motion."

STATEMENT OF THE CASE

On January 1, 2008, Appellant Katie Garding committed a hit-and-run, striking and killing pedestrian Bronson Parsons with her vehicle in East Missoula. *See State v. Garding*, 2013 MT 355, ¶¶ 5-6, 373 Mont. 16, 315 P.3d 912 (*Garding I*). After a jury trial, Garding was convicted of vehicular homicide while under the

influence, failure to stop immediately at the scene of an accident and driving without a valid license. (Doc. 150; *Garding I*, ¶ 17.) In 2011, the district court imposed a 40-year sentence. (Doc. 178.) In 2013, this Court affirmed on direct appeal. *Garding I*, ¶¶ 20, 26. The United States Supreme Court denied Garding's petition for certiorari. *Garding v. Montana*, No. 13-10708 (2014).

In 2015—represented by the Montana Innocence Project—Garding filed a petition for postconviction relief (PCR) in district court, raising the following claims: (1) ineffective assistance of counsel (IAC); (2) newly discovered evidence of actual innocence; and (3) two alleged *Brady v. Maryland*, 373 U.S. 83 (1963) violations. In 2019, after an evidentiary hearing, the district court denied and dismissed Garding's PCR petition. *See Garding v. State*, 2020 MT 163, ¶ 10, 400 Mont. 296, 466 P.3d 501 (*Garding II*). In 2020, this Court rejected every claim—including the IAC claim—and affirmed the district court on PCR review. *Garding II*, ¶ 43. The Supreme Court denied Garding's second petition for certiorari. *Garding v. Montana*, No. 20-721 (2021).

In 2020, Garding next filed a federal habeas petition, re-raising the same IAC claim and the two *Brady* claims but abandoning the newly discovered evidence claim. (*See* 9:20-CV-20-105-M-DLC, 7/12/20 Federal Habeas Petition, Doc. 1.) Meanwhile, on February 3, 2022, Garding was released from prison on parole and continued her sentence in the community under the supervision of the

Department of Corrections (DOC). (Doc. 211, Ex. B.) On March 23, 2023, the federal district court granted Garding's federal habeas petition based on IAC but denied relief on her *Brady* claims. *Garding v. Mont. Dep't of Corr.*, CV 20-105-M-DLC, 2023 WL 3086883 (USDC March 27, 2023) (available at Doc. 211, Ex. C). The federal district court issued a conditional writ in the same order, ordering the State to "move to vacate the state criminal judgment" and "renew proceedings against Garding in the trial court" within 30 days or otherwise unconditionally release Garding and be barred from retrial. *Id*. at * 64-65.

Accordingly, on April 19, 2023, the State alerted the Missoula District Court of the habeas relief granted by the federal district court to Garding based on IAC in the cause number "CV-105-M-DLC[.]" (Doc. 211, Ex. D at 1.) Next, to "strictly comply with [the federal district court's] order," the State moved to "vacate the state criminal judgment and renew proceedings against Garding in the trial court." (*Id*. at 2.) The State also alerted the Missoula District Court that it was "contemporaneously filing an appeal to the Ninth Circuit[.]" (*Id*.)

The next day, "pursuant to the Order in the United States District Court for the District of Montana, Missoula Division, cause number CV-20-105-M-DLC[,]" the Missoula District Court vacated Garding's criminal judgment, reinstated the 2011 Information, and renewed criminal proceedings. (Doc. 211, Ex. E.) Thereafter, the parties repeatedly stipulated to delaying any retrial proceedings

pending the outcome of the Ninth Circuit appeal. (Docs. 202-03, 205-06, 207-08 (Motions and Orders)[1]; Doc. 201, 209, 210 (minute entries confirming each hearing extended upon stipulation).)

Meanwhile, the State pursued its appeal of the IAC decision to the Ninth Circuit. (Doc. 211, Ex. F.) Garding cross-appealed on her *Brady* claims and repeatedly moved to dismiss the State's appeal on the theory that the vacatur of her conviction in state court divested the Ninth Circuit of jurisdiction. On June 28, 2024—after briefing and oral argument—the Ninth Circuit published a decision: (1) reversing the federal habeas relief granted based on IAC; (2) affirming the denial of the *Brady* claims; and (3) affirming it had jurisdiction. *Garding v. Mont. Dep't of Corr.*, 105 F.4th 1247 (9th Cir. 2024).

Garding petitioned for panel rehearing and rehearing en banc. No Ninth Circuit judge requested a vote on whether to rehear the case en banc, and Garding's petition for panel rehearing similarly failed. (Doc. 211, Ex. I.) The

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[1] *See specifically*:

Doc. 202 (State's motion to continue the proceedings because "no opinion has been published" in the "Federal Appeal[]" and further explaining that "Defense Counsel, Toby Cook, has been contacted and does not oppose" the motion.);

Doc. 205 (State's motion to continue the proceedings "for the reason that we are waiting on a ruling from the Ninth Circuit.");

Doc. 207 (State's motion to continue the proceedings "given the pendency of an anticipated ruling by the United States Court of Appeals for the Ninth Circuit."); *Id*. at Affidavit ("Mr. Jennings and Mr. Cook agreed that since the United States Court of Appeals for the Ninth Circuit has not issued its anticipated ruling, the matter should be continued . . . .")

Ninth Circuit also denied Garding's motion to stay the judgment pending her petition for certiorari to the Supreme Court. (Doc. 211, Ex. J.) The mandate was issued on November 12, 2024, which specified: "The Judgment of this Court, entered June 28, 2024, takes effect this date." (Doc. 211, Ex. K.)

On December 16, 2024, on the State's contested motion, the Missoula District Court reinstated Garding's 2011 conviction and judgment. (Doc. 216.) The court also ordered DOC to resume its parole supervision of Garding in the community. (*Id*.) Garding moved to stay the order, which the court denied. (Docs. 218, 227, order attached to Appellant's 1/13/25 Motion to Stay.)

In this Court, Garding renewed her stay motion, which this Court denied, concluding that Garding failed to demonstrate a "strong likelihood of prevailing on her claim that her state court judgment was improperly reinstated or that the public interest supports staying that judgment[.]" (2/24/25 Order at 4.) This Court further observed:

> Notably, rejecting Garding's claim that her release from prison mooted the State's appeal of the federal court's habeas ruling, the Ninth Circuit observed that "Garding was formerly 'in custody' as a state parolee before the district court's grant of habeas relief . . . Thus, just as in *Eagles [v. U.S. ex rel. Samuels*, 329 U.S. 304, 308 (1946)], a reversal would allow a 'resumption of the custody' that had been challenged in habeas corpus." *Garding*, 105 F.4th at 1256.

(*Id*.)

On April 21, 2025, the Supreme Court denied Garding's petition for certiorari. *Garding v. Mont. Dep't of Corr.*, No. 24-6837 (2025).

STATEMENT OF THE FACTS

In this Court's 2020 postconviction decision, it identified the controlling law as *Strickland v. Washington*, 466 U.S. 668 (1984). *Garding II*, ¶ 14. This Court explained how the record "proves convincingly that Garding's counsel presented a strong defense." *Id.* ¶ 22. This Court observed that counsel "countered or sought to undermine virtually every evidentiary contention introduced by the State, and the jury was left with the unenviable task of making numerous credibility determinations in order to resolve evidentiary conflicts necessary to reach a verdict." *Id*. ¶ 17. This Court detailed how counsel: (1) "broadly attacked" the credibility of critical fact witnesses; (2) provided "multiple alternative theories" for what happened that night; and (3) countered the State's medical expert with her own expert forensic pathologist. *Id*. ¶¶ 18-20. This Court rejected the argument that counsel was constitutionally required to secure an accident reconstructionist, especially when "the State did not pursue an accident reconstruction either." *Id*. ¶ 22. This Court declined to conduct a hindsight review and held that counsel's representation was not "outside the wide range of professionally competent assistance" under the first prong of *Strickland*. *Id*. ¶ 23.

The federal district court instead held that this Court's decision "resulted from an objectively unreasonable application of *Strickland*[.]" *Garding*, 2023 U.S. Dist. LEXIS 52121, * 25. The court contrarily claimed that Garding's counsel "made no strategic considerations[]" and there was no reason to believe that crash reconstruction expert testimony "could have inculpated her client." *Id*. * 28. The court faulted counsel for not pursuing two lines of defense, and claimed that, while the State never secured a crash reconstructionist either, the troopers who testified were given the "imprimatur of expert testimony." *Id*. * 30. In support, the federal district court did not rely on Supreme Court precedent but instead attempted to expand upon non-AEDPA circuit precedent.[2] *See Id*. * 27 (citing *Duncan v. Ornoski*, 528 F.3d 1222, 1235 (9th Cir. 2008)).

In a published opinion, the Ninth Circuit reversed, holding that the "district court wrongly held that the Montana Supreme Court unreasonably applied *Strickland*." *Garding*, 105 F.4th at 1258. The Ninth Circuit determined the federal district court "misapplied the law and misconstrued the record in holding otherwise." *Id*. The opinion echoed this Court's *Strickland* analysis in the first

[2] The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) is a statutory framework circumscribing federal habeas review to provide relief only if the state court's decision was "contrary to, or involved the unreasonable application of, clearly established federal law, *as determined by the Supreme Court of the United States*" or if the decision resulted in an unreasonable determination of the facts in light of the evidence at the state court proceeding. 28 U.S.C § 2254(d)(1)-(2) (emphasis added).

instance. The court highlighted Garding's counsel's strong defense and how she effectively countered the State's case. *Id*. The court explained the trial record shows that counsel's strategy was to "cast doubt" on the State's case, and the decision to not utilize an accident reconstructionist was reasonable in such a circumstance. *Id*. Notably, the court explained, the State never pursued or presented an expert accident reconstructionist either and the same defense counsel had utilized an accident reconstructionist in prior trials. *Id*. at 1257.

Relevant here, the Ninth Circuit explained that the Missoula district court vacated Garding's conviction "pursuant to the Order in the United States District Court for the District of Montana[,]" and thus reasoned that "the State court judgment was set aside *only* because of the [federal] district court's habeas decision." *Garding*, 105 F.4th at 1255 (emphasis added). The court explained that "[r]eversal of the district court's order would remove the current federal court impediment to any state court reinstatement of the judgment and cancellation of the new trial." *Id*. And reversal "undoes what the habeas corpus court did and makes lawful a resumption of the custody." *Id.* at 1256 (citing *Eagles v. United States ex rel. Samuels*, 329 U.S. 304, 307-08 (1946)). The court concluded that "the new trial against Garding has not yet begun, and by reversing the district court's order, we can provide Montana with relief." *Id*.

SUMMARY OF THE ARGUMENT

This case operates at a unique intersection of a State's sovereign right to impose criminal sentences in tension with the limited federal habeas review under AEDPA. Garding's final appeal in state court resulted in this Court's 2020 PCR decision correctly applying *Strickland*. In 2023, the federal district court extraordinarily held that this Court "unreasonably" applied *Strickland* and that a crash reconstructionist expert was required for Garding's trial for counsel to be effective under *Strickland*—despite that: (1) the state never secured a crash reconstructionist for trial either; (2) defense counsel had used a crash reconstructionist in prior trials; and (3) defense counsel's strategy was to highlight the alleged defects in the State's investigation. But nothing in *Strickland* required counsel to perform as the federal district court suggested. The Ninth Circuit correctly acknowledged the lower federal court "misapplied the law and misconstrued the record in holding otherwise." The federal district court's erroneous decision—which violated AEDPA—is now gone via the Ninth Circuit's reversal.

Accordingly, this Court should reject Garding's suggestion that this Court should instead effectuate the federal district court's decision that has been duly reversed. The Ninth Circuit reversed the only basis for which Garding was ever given relief, IAC. Under well-established Supreme Court precedent, reversal

undoes what the federal district court did and makes lawful a resumption of custody. Here, Garding was serving her sentence on parole conditions in the community prior to habeas relief being granted, and she is now under her parole conditions in the community again after the resumption of her sentence. Under the circumstance where no constitutional error exists and the federal district court's erroneous habeas decision is now a legal fiction, Garding cannot show that the Missoula District Court erred in reinstating her valid 2011 conviction and resuming her sentence.

Garding next argues the Missoula District Court erred for not effectuating her motion to substitute the judge. Garding neglects to explain that she only provisionally filed a substitution motion in case a re-arraignment occurred and triggered substitution—which never happened because Garding repeatedly stipulated to delaying retrial pending the Ninth Circuit appeal. But even assuming Garding had the right to substitution for retrial, that right extinguished upon the Ninth Circuit's reversal of her habeas relief and the cancellation of the retrial. Garding's claim is thus moot.

Finally, Garding summarily argues a myriad of trial rights were violated based on the faulty premise the district court "convicted" her on a "motion." But that's not what happened. Garding received all her trial rights, and she was duly convicted by a 12-person jury in 2011. The district court brought that 2011

conviction and sentence back by operation of law to effectuate the Ninth Circuit's reversal of Garding's habeas relief. This Court should affirm.

ARGUMENT

I. The district court legally reinstated and resumed Garding's constitutionally valid 2011 sentence.

A. Standard of review

Whether a sentence is legal is a question of law, which this Court reviews de novo for correctness. *State v. Martin*, 2019 MT 44, ¶ 12, 394 Mont. 351, 435 P.3d 73.

B. Discussion

Federal habeas review of state convictions frustrates both the State's sovereign power to punish offenders and their good-faith attempts to honor constitutional rights." *Harrington v. Richter*, 562 U.S. 86, 103 (2011) (citing *Calderon v. Thompson*, 524 U.S. 538, 555-56 (1998)). It "disturbs the State's significant interest in repose for concluded litigation, denies society the right to punish some admitted offenders, and intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority." *Id*. (citation omitted). Thus, the federal writ of habeas corpus is an "extraordinary remedy" that guards only against "extreme malfunctions in the state criminal justice system." *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) (citing *Richter*, 562 U.S. at 103).

The typical relief granted in federal habeas corpus is a conditional writ, requiring the state government to release the prisoner unless it takes some remedial action, such as retrying or resentencing him. *See Herrera v. Collins*, 506 U.S. 390, 403 (1993); *Hinton v. Braunskill*, 481 U.S. 770, 775 (1987). The issuance of a conditional writ is effectively a declaration that the petitioner "is being held in custody in violation of his constitutional (or other federal) rights[.]" *Rose v. Guyer*, 961 F.3d 1238, 1246 (9th Cir. 2020).

However, the reversal of a federal court's issuance of habeas relief "undoes what the *habeas corpus* court did and makes lawful a resumption of the custody." *Eagles*, 329 U.S. at 308 (emphasis in original); *see Kernan v. Cuero*, 583 U.S. 1, 7 (2017) (reaffirming this basic habeas principle from *Eagles*); *see also Garding*, 105 F.4th at 1256 (citing *Eagles*).

Here, the federal district court granted Garding's habeas petition based on the erroneous conclusion that Garding's counsel was ineffective. Thus, the habeas court used its extraordinary power to improvidently issue a conditional writ, which the State complied with under duress. The effect of the court's order was to find that Garding received constitutionally ineffective assistance under the Sixth Amendment, and to compel the State to act in accordance with its conditional writ.

However, the State successfully sought relief from that erroneous order and writ on appeal, and the Ninth Circuit reversed, finding that Garding's counsel's

representation was "not constitutionally deficient[.]" *Garding*, 105 F.4th at 1250. The Ninth Circuit also denied Garding relief on all other cross-appeal claims. Now that the federal district court's action is "undo[ne]," it is appropriate to proceed as if that decision never existed. And because no constitutional error remains and the federal district court's decision is undone, it was "lawful" for the Missoula District Court to resume the prior custody. *See Eagles*, 329 U.S. at 308.

Garding's attempt to argue that *Eagles* is inapplicable by simply citing some summary orders of dismissal from 1942 and 1943—before *Eagles* was published—is unpersuasive. (Appellant's Br. at 27.) Garding next argues that *Eagles* only stands for the "unremarkable premise" that an appellate court can reverse a lower court. (*Id*. at 28.) But the Supreme Court in *Eagles* did not just say that a court can reverse a decision. It instead explained the fundamental principle and very specific relief in federal habeas proceedings that reversal "undoes what the habeas corpus court did" and "makes lawful a resumption of the custody."

This remedy in federal habeas aligns with the purpose and intent of federal review of state court convictions. Federal habeas review of state-court convictions is circumscribed, and its "purpose [is] to further the principles of comity, finality, and federalism." *Williams v. Taylor*, 529 U.S. 420, 436 (2000). Further, "[f]ederal habeas corpus principles must inform and shape the historic and still vital relation

of mutual respect and common purpose existing between the States and the federal courts." *Id*. Thus, "[i]n keeping this delicate balance [the U.S. Supreme Court] ha[s] been careful to limit the scope of federal intrusion into state criminal adjudications and to safeguard the State's interest in the integrity of their criminal and collateral proceedings." *Id*. (collecting cases).

Garding nonetheless argues that *Eagles* can be distinguished upon the procedural posture of the case, thus Garding infers that the Supreme Court must not have been espousing a fundamental habeas principle. (Appellant's Br. at 28-29.) But Garding is wrong because *Eagles* applies whether the habeas petition originates in federal court or is subsequently filed in federal court after the denial of state court relief. For example, the *Eagles* principle was applied on federal habeas AEDPA review of a state court decision as recently as 2017. *Cuero*, 583 U.S. at 6. In *Cuero*, after the state courts had denied relief on Cuero's claims, the Ninth Circuit granted federal habeas relief, deciding that Cuero was entitled to specific performance of a lower range sentence. *Id*. at 2. But the Supreme Court—in reversing the Ninth Circuit *even after* Cuero was resentenced pursuant to the Ninth Circuit's decision—cited the fundamental habeas principle that "reversal would simply 'und[o] what the *habeas corpus* court did,'" and that "state courts" were permitted "in the first instance" to determine the legality of the longer sentence. *Id*. at 6 (citing *Eagles*, 329 U.S. at 306-08). In other words, after an

improvident habeas grant is reversed, the State is legally authorized to take remedial action and the clock is rewound as the effects of that improvident habeas grant no longer exists. As the Ninth Circuit accurately observed here:

> Garding was formerly "in custody" as a state parolee before the district court's grant of habeas relief. *See Thornton v. Brown*, 757 F.3d 834, 841 (9th Cir. 2013) ("A state parolee is 'in custody' for purposes of the federal habeas statute.") Thus, just as in *Eagles*, a reversal would allow a "resumption of the custody" that had been challenged in habeas corpus.

Garding, 105 F.4th at 1256. And the Ninth Circuit correctly acknowledged that "by reversing the district court's order, we can provide Montana with relief." *Id*.

Next, Garding's quibbles with the Missoula District Court's reference in its order to the Ninth Circuit's mandate. (Appellant's Br. at 24-25.) But the district court did not err in relying on the issuance of the mandate to resume Garding's sentence. Here, the State did not move to resume Garding's sentence until the mandate was duly issued. At that time, the federal appeal was officially over and it was then legal to effectuate the Ninth Circuit's order of reversal and judgment. Fed. R. App. P. 41. Indeed, the mandate itself specified: "The Judgment of this Court, entered June 28, 2024, takes effect this date." (Doc. 211, Ex. K.) Garding further argues that a federal court could not itself reinstate her sentence, only the state court can. (Appellant's Br. at 26-27.) But that's why the State asked the Missoula District Court to do so, and it did. (Doc. 216.)

Finally, Garding argues that it was the "State's actions, rather than anything the federal district court did, that led to the vacatur of Garding's criminal judgment and her release from custody." (Appellant's Br. at 26.) Garding is wrong again. As the Ninth Circuit observed, "the State court judgment was set aside *only* because of the [federal] district court's habeas decision." *Garding*, 105 F.4th at 1255 (emphasis added).

In conclusion, the district court legally reinstated Garding's valid 2011 judgment and legally resumed her sentence upon the reversal of federal habeas relief.

II. Garding is not entitled to judicial substitution.

A. Background

After the federal habeas grant, on April 20, 2023, the Missoula District Court ordered that the 2011 judgment was vacated and the criminal proceedings were reinstated and "renewed." (Doc. 195 at 1-2.) Four days later, Garding filed a motion "pursuant to § 3-1-804(1)(b), MCA[,]" the arraignment triggering provision, to substitute the judge. However, Garding acknowledged that nothing had yet triggered substitution, explaining:

> The Court has issued an Order Setting Scheduling Conference in this matter. Thus, it appears that the Court may not intend to hold an arraignment in this matter. As such, and in an abundance of caution, Ms. Garding files this Motion in order to preserve her

> statutory rights under § 3-1-804(1)(b), MCA. In the event the Court sets an arraignment hearing at the Scheduling Conference, Ms. Garding will renew this motion within ten (10) days after that hearing.

(Doc. 197.) After the State responded, in her reply brief, Garding argued for the first time that substitution could be appropriate under a different theory, and that it applies "within 20 calendar days after the district court has ordered a new trial." (Doc. 199 at 3) (citing Mont. Code Ann. § 3-1-804(11).) Garding nonetheless repeated her prior acknowledgement that "she filed her motion" in an "abundance of caution[]" and offered that she was "willing to renew her motion once an arraignment or new trial is set." (*Id*.)

Thereafter, the parties repeatedly stipulated to delaying any retrial proceedings pending the outcome of the Ninth Circuit appeal, and the district court did not rule on the substitution motion. (Docs. 202-03, 205-06, 207-08.)

Nothing else happened until the State filed a motion to reinstate Garding's 2011 conviction on November 27, 2024, following the Ninth Circuit's mandate issuance ending the federal appeal on November 12, 2024. (Doc. 211 (motion); Doc. 211, Ex. K (mandate).) Then—while the district court allowed further briefing on the reinstatement motion—it cancelled and vacated any further hearings. (Doc. 212.) The district court later reinstated the conviction and resumed Garding's supervision. (Doc. 216.)

B. Standard of review and applicable law

The right to substitute a district judge "neither is, nor derives from, a fundamental federal or state constitutional right." *Lesage v. Twentieth Judicial Dist. Court*, 2021 MT 72, ¶ 10, 403 Mont. 476, 483 P.3d 490. It is instead "a procedural rule of court, discretionarily afforded by this Court" and "available only in accordance with its express prerequisites and conditions." *Id*.

This Court reviews for correctness a district court's ruling on a motion to substitute a district court judge. *Patrick v. State*, 2011 MT 169, ¶ 12, 361 Mont. 204, 257 P.3d 365.

C. Discussion

Garding claims that she "timely" filed the motion and she had the right to substitution under the trial arraignment triggering provision in Mont. Code Ann. § 3-1-804(1)(b). (Appellant's Br. at 19.) On the other hand, Garding admits she "has not been [re]arraigned" and the "triggering" provision for the "10-day deadline for Garding to file a motion to substitute still has not occurred." (*Id*. at 20, 21.) Garding also argues she possessed the right to substitution under the new trial provision for substitution. (*Id*. at 21.)

1. The issue is moot

Whether an issue is moot is a threshold question this Court addresses before considering the merits of a dispute. *Grabow v. Montana High Sch. Ass'n*,

2000 MT 159, ¶ 14, 300 Mont. 227, 3 P.3d 650. An issue is moot when due to the happening of an event; it no longer presents an actual controversy. *Havre Daily News, LLC, v. City of Havre*, 2006 MT 215, ¶ 31, 333 Mont. 331, 142 P.3d 864. In other words, "[a] question is moot when the court cannot grant effective relief." *Sebastian v. Mahoney*, 2001 MT 88, ¶ 7, 305 Mont. 158, 25 P.3d 163 (citing *Shamrock Motors, Inc. v. Ford Motor Co.*, 1999 MT 21, ¶ 19, 293 Mont. 188, 974 P.2d 1150). This Court may not exercise its original jurisdiction to address a hypothetical controversy or answer moot questions. *Shamrock Motors, Inc.,* ¶ 19.

Garding's claim on appeal is moot because this Court can no longer grant her relief on her prior request to substitute the judge for an arraignment and retrial. The text and intent of substitution statutes contemplate substitution for a trial. *See, e.g.,* Mont. Code Ann. § 3-1-804(1)(b) (in a "criminal action," the "arraignment" is the triggering point); *see also Patrick,* ¶ 22 (explaining the 1903 passage of the "Fair Trial Bill" allowing judicial substitution to address extortion and judicial corruption). While Garding argued below that she could have the substitution right based on future possible arraignment for a criminal retrial proceeding, she no longer has the right to a retrial. Indeed, the reversal of the habeas relief grant is dispositive because "a decision in the State's favor would release it from the burden of the new trial itself[.]" *Calderon v. Moore*, 518 U.S. 149, 150 (1996);

accord Garding, 105 F.4th at 1255 (citing *Moore* for the same effect of cancelling retrial via habeas reversal).

Here, while Garding had the right to proceed with retrial beginning on April 20, 2023, she instead repeatedly stipulated to delaying retrial until the conclusion of the Ninth Circuit appeal. Then, at the point of the Ninth Circuit's reversal and mandate, effective on November 12, 2024, retrial was no longer an option. *See Moore*, 518 U.S. at 150. Again, this is because the effect of that reversal "und[id] what the *habeas corpus* court did and ma[de] lawful a resumption of the custody." *Eagles*, 329 U.S. at 308. And while Garding's filing alerted the district court she *might* file a substitution motion in the future if substitution were to then be triggered, Garding never thereafter renewed her motion. This was likely because there is no specified right triggering substitution where—due to intervening circumstances—a trial will no longer occur. Garding is thus no longer entitled to substitute a judge for retrial which is now unwarranted, and to the extent she ever was, that time is now a legal fiction. Indeed, on appeal, Garding concedes that a triggering event still has not yet occurred, but Garding somehow argues that this fact entitles her to substitution now. But Garding only reinforces the State's point. She no longer has the right to a retrial and the issue is moot.

2. The district court was not required to rule upon Garding's substitution motion.

Alternatively, Garding was not entitled to substitution based on her filing itself. First, Garding's filing cannot reasonably be characterized as a "motion" but rather appears to be more of a "notice." A motion is "[a]written or oral application requesting a court to make a specified ruling or order." *Depositors Ins. Co. v. Sandidge*, 2022 MT 33, ¶ 10, 407 Mont. 385, 504 P.3d 477 (citing *Motion, Black's Law Dictionary* (11th ed. 2019)). Garding did not request any specified relief in her filing. Rather, the basis of Garding's filing was to merely give the district court advance notice that she intended to "renew" the motion when it was the proper time for filing it, based on a future arraignment triggering event, even though Garding ultimately repeatedly stipulated to not proceeding with a new trial. (*See* State's Ex. 1; *see also* State's fn. 1 for detailed account of Garding's repeated stipulations.) Under the circumstances, Garding's "motion" had no effect and the district court was not required to rule on it.

But even if this Court generously construed Garding's filing as a "motion" for relief, the district court was still not required to act on it, particularly because, as Garding admitted, the triggering event she identified as the basis for the motion had not occurred. (Ex. 1.) Montana Code Annotated § 3-1-804(1)(b) provides "[i]n a criminal action, a motion for substitution by the . . . defendant must be filed *within* 10 calendars days *after* the defendant's arraignment." (Emphasis added.)

According to the plain language of the statute, the triggering event for the filing of the motion is after the arraignment. The substitution statutes do not provide for the filing of a sort of provisional motion to preserve any speculative future right to substitution. Garding did not pursue retrial, thus an arraignment and a retrial never occurred. Garding's "motion" thus had no force or effect—and she never carried through with her promise to renew the motion if any future triggering event occurred. This Court should reject Garding's claim on appeal.

III. Garding cannot show that her constitutional rights were violated via the reinstatement of her 2011 judgment and the resumption of her sentence.

A. Standard of review

This Court's review of constitutional issues in plenary. *State v. Hislop*, 2016 MT 130, ¶ 7, 383 Mont. 482, 373 P.3d 834.

B. Discussion

Garding next presents numerous insufficiently briefed shotgun claims. (*See* Appellant's Br. at 29-46.) The overall premise of the undeveloped claims is the district court opted to "convict[] her on motion, without meeting any evidentiary burden and without a jury verdict." (Appellant's Br. at 30.) But, dispositively for each claim, the district court never reconvicted her or imposed any new sentence in 2024. Rather, after Garding's habeas relief was reversed, it effectuated and continued her valid 2011 sentence as it was legal for the court to do so.

1. Garding's various trial rights were not violated.

Garding claims that her trial rights, including the "presumption of innocence," the "right to require the government to prove every element of a charged offense beyond a reasonable doubt," and the "right to a fair trial before an impartial jury," were violated. (Appellant's Br. at 30.) Garding also argues she has the right to an initial appearance, an arraignment, an omnibus hearing, and a jury trial. (*Id*. at 43-46.) But Garding ignores that the government proved its case and the jury convicted her in 2011. She also repeatedly stipulated not to proceed with retrial proceedings throughout 2023 and 2024—and actually expressly decided to wait for the Ninth Circuit's decision—even though the intervening time was her only opportunity for retrial. Finally, once the Ninth Circuit reversed the only basis for which Garding was ever granted habeas relief, Garding no longer had the right to retrial. This claim is meritless.

2. The district court did not illegally sentence Garding.

Garding next argues that it was the State's "unilateral decision to reinstate a conviction" and the district court improperly made a "decision to sentence Garding to parole conditions" which allegedly violated her Eighth Amendment rights. (Appellant's Br. at 32.) Garding later argues her sentence is illegal because "a district court lacks authority to impose conditions on parole." (*Id*. at 46.) Garding

argues the district court opted to "convict" her on a "motion" without trial procedures. (*Id*. at 30.)

This argument fails. Garding was only temporarily relieved of her sentence based on the federal district court's erroneous order that was duly reversed. Contrary to Garding's claims, the district court has not engaged in an "arbitrary imposition of punishment"—Garding's punishment was imposed by the district court in 2011 after a valid jury conviction, and it was merely resumed when the Ninth Circuit reversed the federal district court's erroneous decision. The Missoula District Court did not decide upon a new sentence in 2024, it simply resumed Garding's 2011 valid sentence. For the same reasons, the district court did not "reconvict" Garding via a motion.

Garding also incorrectly argues the court "sentenced" her to "parole conditions"—her parole conditions were imposed by the Parole Board in December 2021 prior to Garding being released on parole and prior to her habeas relief being granted. (BOPP Final Board Dispositions (Dec. 2021) available at Final Dispositions 12-2021.) The effect of the reinstatement and resumption of Garding's 2011 valid judgment merely resumed Garding's status to what it was prior to being given habeas relief. Thus, DOC's supervision of Garding in the community under the parole conditions—the same status as before Garding was given habeas relief—was validly resumed.

3. Garding's right to due process was not violated, nor may Garding relitigate this Court's 2020 PCR decision.

Garding has not been denied her due process rights. Throughout 2011 to 2024, Garding exhausted her claims and exercised her constitutional rights, including her direct appeal, her postconviction proceedings, and her federal habeas proceedings. Garding has been capably represented by the Montana Innocence Project or private counsel throughout the PCR and federal habeas proceedings. The State has not frustrated Garding's pursuit of relief, even though Garding now no longer has any remedies available to raise and pursue new claims.

Instead, Garding here attempts to exercise *more* process than she is due. Having already exhausted her PCR claims in 2020—which have been duly rejected by this Court—Garding attempts to relitigate and retread the same ground. (*See* Appellant's Br. at 3-13 (attempting to rehash her crash reconstruction evidence); *Id*. at 31, 33-35 (arguing about the credibility of her PCR experts as compared to the troopers' trial testimony). Particularly, Garding inappropriately attempts to relitigate this Court's decision rejecting Garding's crash reconstruction evidence in support of her "newly discovered evidence" (NDE) claim, the same claim she would later actually abandon in federal habeas proceedings. *Compare Garding II*, ¶¶ 38-43 (rejecting NDE claim based on Garding's crash reconstruction evidence) *to* Appellant's Br. at 40-41 (attempting to again bolster the credibility of her crash

reconstructionist experts and present the same analysis and conclusions that she presented before this Court in her 2020 PCR appeal).

Res judicata and the law of the case both bar Garding's attempt to relitigate her PCR claims. *State v. Wagner*, 2013 MT 47, ¶ 18, 369 Mont. 139, 296 P.3d 1143 ("Under the law of the case doctrine, a prior Montana Supreme Court decision resolving an issue between the same parties is binding and may not be relitigated); *Kullick v. Skyline Homeowners Ass'n*, 2003 MT 137, ¶ 17, 316 Mont. 146, 69 P.3d 225 (Res judicata precludes parties from relitigating claims they have already had an opportunity to litigate.). And to the extent that Garding is attempting to raise any *new* substantive claims collaterally challenging her conviction that she never raised in her 2015-2020 PCR state court proceedings, those claims are barred too. *See* Mont. Code Ann. § 46-21-105(1)(a) (All grounds for relief claimed by petitioner under § 46-21-101 must be raised in the original or amended original petition); *compare to* Appellant's Br. at 33-35 (Garding's apparent attempt to raise a new *Napue v. Illinois*, 360 U.S. 264 (1959), claim in this proceeding relating to the same facts that were before this Court in the original 2020 PCR proceeding.).

4. Garding's speedy trial claim fails.

Garding's speedy trial claim fails for many reasons. First, apart from her substitution motion, Garding never filed any motions below, much less did she file a motion to dismiss for lack of speedy trial. Because she never filed any speedy

trial motion, the district court necessarily never engaged in a balancing analysis or issued a ruling. Accordingly, any speedy trial claim is unpreserved and not properly before this Court. Second, Garding even acknowledges that she has failed to "provide a full *Ariegwe* analysis here." (Appellant's Br. at 42 n.14.) But even if this Court somehow reached the merits, it is not a good faith claim. Merely addressing one of four factors, the length of delay, Garding disingenuously calculates the delay as continuing without cessation since her original Information was filed in 2011 until now. (*Id*. at 42 (arguing 4,963 days of delay); *but see Betterman v. Montana*, 578 U.S. 437, 439 (2016) (the Speedy Trial guarantee "protects the accused from arrest or indictment through trial[.]") But even further entertaining Garding's claim for the sake of argument, Garding's repeated stipulation to not pursue retrial during the Ninth Circuit appeal highlights her responses to the delay, and that she had no real interest in pursuing a retrial.

5. Garding's statute of limitations claim fails.

Garding's next variation on the same theme argues that the State cannot now press an Amended Information charging her with her original offenses because the statute of limitations has passed. But Garding never raised this defense below, thus it is waived. And Garding's speculation on whether the State could have reprosecuted and reconvicted her is irrelevant. The State is no longer proceeding with a retrial because it was cancelled via the Ninth Circuit's reversal of Garding's

habeas relief and the resumption of her valid original sentence. Garding's original Information and Amended Information charging her with the felony offenses was filed well within the statute of limitations. (Docs. 3, 102.) Because Garding's 2011 conviction and judgment is again valid and operative, Garding's claim fails.

6. Garding fails to show the several cases she wants to overrule are manifestly wrong.

Garding's final argument asking this Court to overrule numerous cases merits little discussion as Garding fails to show that this Court's decisions were manifestly wrong. But even assuming arguendo she could, Garding still fails to explain why it would matter here. Whether Garding's civil or political rights were restored after the vacatur of her 2011 judgment did not prohibit the State from resuming Garding's criminal proceedings in Missoula District Court. *Garding v. Mont. Dep't of Corr.*, 2023 WL 3086883, at *64-65 (conditional writ ordering resumption of state criminal proceedings.) Nor did it prohibit the Ninth Circuit from exercising its jurisdiction to reverse a habeas grant. *Eagles*, 329 U.S. at 307 ("Though the writ has been granted and the prisoner released, the appellate court by what it does is not rendering an opinion and issuing an order which cannot affect the litigants in the case before it."). Nor did it prohibit the Missoula District Court from effectuating the Ninth Circuit's decision. *Id*. at 308 (reversal "undoes what the habeas corpus court did and makes lawful a resumption of the custody").

CONCLUSION

For the above reasons, the State respectfully requests that this Court reject Garding's arguments and affirm the district court.

Respectfully submitted this 12th 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 6,624 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Roy Brown
ROY BROWN

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0732

STATE OF MONTANA,

Plaintiff and Appellee,

v.

KATIE IRENE GARDING,

Defendant and Appellant.

APPENDIX

CERTIFICATE OF SERVICE

I, Roy Lindsay Brown, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-12-2025:

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