

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
**No. DA 24-0545**

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STATE OF MONTANA,

Plaintiff and Appellee,

vs.

CHARLES G. LANE,

Defendant and Appellant.

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**APPELLANT'S OPENING BRIEF**

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On Appeal from the Montana Sixth Judicial District Court, Park  
County, the Honorable Brenda R. Gilbert, Presiding

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## I. STATEMENT OF THE CASE

On October 15, 2020, someone dropped a small bag of methamphetamine at Lucky Lil's in Livingston, MT. Tr. Tr. at 125. No one saw the individual possess the bag, and no one saw them drop it. The Lucky Lil's employee who discovered the bag believed it belonged to a customer, Christopher Smalls, an individual with a known history of drug use. *Id.* at 128. Yet, on May 26, 2023, a Montana jury convicted the Appellant, Mr. Charles Lane, of criminal possession of dangerous drugs as it pertained to the same bag of methamphetamine. Appendix A: *Verdict Form*; DC Doc. 214.

At an ensuing sentencing hearing, the Court sentenced Mr. Lane to a four-year deferred imposition of sentence. Sent. Tr. at 13. The Court pronounced its sentence and asked the State to draft the Judgment and Order. *Id.* at 15. Only after that did the Court address credit for time served briefly with two words, "okay" and "yes," when defense counsel requested the court grant credit for 33 days. *Id.* Instead of 33 days, the record clearly shows that Mr. Lane earned 133 days of credit for time served during pre-trial incarceration. DC Doc. 220.

When the Court issued its written judgment and order, it was mum regarding credit for time served. Appendix B: *Judgment and Order*. Neither the state nor the defense requested that the court modify the written judgment. Mr. Lane appeals his May 26, 2023, conviction and his July 24, 2023, sentence. DC Doc. 227.

## II. STATEMENT OF THE ISSUES

Whether the State failed to present sufficient evidence that proved beyond a reasonable doubt that Mr. Lane was guilty of criminal possession of dangerous drugs, where no witness saw him possess or discard the bag of methamphetamine.

Whether the lower court erred by failing to credit Mr. Lane with 133 days' credit for time served and failed to include any credit for time served in its written judgment and order.

Whether Mr. Lane's counsel was ineffective (1) for failing to ask the court to impose 133 days' credit for time served instead of the 33 days, when the record was clear that he earned 133 days, and (2) for failing to request modification of the Court's written judgment to include any credit for time served.

### III. STATEMENT OF THE FACTS

October 15, 2020, Lucky Lil's employee, Ms. Aubrey Wiles, was working the closing shift as a floor runner. Tr. Tr. at 120. As a floor runner, she served clients drinks, cashed out tickets, and waited on customers. Tr. Tr. at 119. During her shift, she was running around on the floor serving clients. She testified that during her time on the floor, she did not see anything lying on the floor in front of the counter. Tr. Tr. at 156. When she came back behind the counter, she served two separate customers-- Chris Smalls and Charles Lane. Tr. Tr. at 123, 127.

After making change for the clients, Ms. Wiles went back to the floor and found a small white bag on the floor in front of the counter. She testified that she assumed the customers reached into their pockets to grab their wallets or money, but she did not personally see them do so. Tr. Tr. at 123. Furthermore, she did not see either of the customers drop the bag. However, she collected it from the floor. Tr. Tr. at 126. She testified that she secured it in the office's safe. Id.

When Officer Lashinski came to Lucky Lil's to collect the baggy, it was sitting on the office desk. Tr. Tr. at 168. At that time, Ms. Wiles

explained to Officer Lashinski that she believed the bag belonged to Mr. Chris Smalls due to his known history of drug use. Tr. Tr. at 128.

However, through his investigation, Officer Lashinski came to believe that Mr. Lane was the last individual who was at the counter before Ms. Wiles discovered the baggy. Tr. Tr. at 129.

At the ensuing jury trial, the State brought in another Lucky Lil's employee, Mr. Famighetti, to testify about Lucky Lil's policy regarding their security surveillance. Tr. Tr. at 102-117. Mr. Famighetti was neither employed at Lucky Lil's in 2010 when the corporate policies were implemented nor at the time of the October 15, 2020, incident. *Id.* However, over objection, the court allowed him to testify about Lucky Lil's policies despite not having any active role in the incident, the collection of the video, or what the video showed. Tr. Tr. at 107.

The State's last witness was Brook Knapp from the Montana Department of Justice. Tr. Tr. at 177. She provided expert testimony regarding the substance found at Lucky Lil's that she determined was methamphetamine. Tr. Tr. at 177—190. Mr. Lane and his counsel did not contend that the substance in question wasn't methamphetamine. Tr. Tr. at 198.

After deliberations, the jury found Mr. Lane guilty of criminal possession of dangerous drugs. DC Doc 214. Prior to the scheduled sentencing hearing on July 24, 2023, Mr. Barrett from Probation and Parole authored a Presentence Investigation Report and an Addendum, which detailed the credit for time served Mr. Lane was entitled to. DC Docs 219 & 220. During the sentencing argument portion, the State argued for a four-year commitment to the DOC with two years suspended. Sent. Tr. at 10. Mr. Lane maintained his innocence, and his counsel countered the State's argument by requesting a two-year deferred imposition of sentence, highlighting that the current offense was Mr. Lane's first and only felony conviction. *Id.* The court and counsel discussed Mr. Lane's success at Badlands Recovery Center. Tr. Tr. at 15. The court also delved into Mr. Lane's ability to pay fines and fees. Tr. Tr. at 12.

At the tail end of the sentencing hearing, the court stated, "I would ask the State to prepare a Sentencing Judgment that comports with the Court's Oral pronouncement. Any other questions?" Sent. Tr. at 15.

In response, Mr. Lane's counsel jumped in:

**MS. KRAMER:** So, your Honor, thirty-three days credit for time served –

**THE COURT:** Okay.

**MS. KRAMER:** On a Deferred now –

**THE COURT:** Yes.

**MS. KRAMER:** -- under current law. *Id.*

There were no other discussions about Mr. Lane’s credit for time served. Furthermore, when the court issued its Judgment and Order on July 26, 2023, it failed to mention any credit for time served. DC Doc. 224. Approximately two weeks later, the Officer of Public Defender filed a Notice of Substitution of Counsel, noting the Appellate Defender Division would take over Mr. Lane’s case. DC Doc. 225. Neither Mr. Lane’s trial counsel nor appellate counsel filed a request to modify the written judgment to include credit for time served.

#### **IV. SUMMARY OF THE ARGUMENT**

The State failed to prove beyond a reasonable doubt that “(1) That the Defendant possessed the dangerous drug, methamphetamine; AND 2. That the Defendant acted purposely or knowingly.” The State

brought forth evidence at trial that Mr. Lane was at the Lucky Lil's counter, where Ms. Wiles later found a small bag of what was later determined to be methamphetamine. Even taken in the light most favorable to the State of Montana, no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Christensen*, 2020 MT 237, ¶ 11, 401 Mont. 247, 472 P.3d 622 (citing *State v. LaMere*, 2003 MT 49, ¶ 13, 314 Mont. 326, 67 P.3d 192).

The district court unlawfully penalized Mr. Lane, an indigent defendant, by failing to credit him with the time he spent incarcerated before his conviction. The time Mr. Lane was incarcerated was easily calculated thanks to an addendum provided by probation and parole during the pre-sentence investigation process. A sentencing court is legally mandated to calculate and credit a defendant with the time he has spent incarcerated before or post-conviction. *State v. Parks*, 2019 MT 252, ¶ 9, 397 Mont. 408, 450 P.3d 889 (citing *State v. Hornstein*, 2010 MT 75, ¶ 12, 356 Mont. 14, 229 P.3d 1206). The fact that the court sentenced him to a deferred imposition instead of straight prison or DOC time has no bearing on the credit for time served analysis, as a deferred "requires the crediting of time served." *State v. Ellsworth*, 2023

MT 8, ¶ 11, 411 Mont. 213, 523 P.3d 527. By failing to grant credit, the court has unlawfully extended Mr. Lane’s sentence by over 100 days.

Regarding Mr. Lane's representation at his sentencing hearing, his counsel failed to inform the court of the correct credit for time calculation provided by Probation and Parole; instead of arguing for 133 days, counsel requested 33. There was no plausible justification for this deficit performance. *State v. Wright*, 2021 MT 239, ¶ 10, 405 Mont. 383, 495 P.3d 435. Defense counsel was further ineffective by failing to request that the court modify its written judgment to include credit for time served. Both omissions by Mr. Lane’s counsel prejudiced him by further extending his sentence and restraining his liberty.

## V. STANDARD OF REVIEW

This Court reviews “[a] claim of insufficiency of evidence .... de novo, regardless of whether it was raised below.” *State v. Rodriguez*, 2024 MT 132, ¶ 10, 417 Mont. 52, 551 P.3d 292 (citing *State v. Robertson*, 2014 MT 279, ¶ 16, 376 Mont. 471, 336 P.3d 367).

“The law affords a sentencing court no discretion to grant credit for time served.” *State v. Spagnolo*, 2022 MT 228, ¶ 5, 410 Mont. 457, 520 P.3d 330 (citing *State v. Tippets*, 2022 MT 81, ¶ 10, 408 Mont. 249, 509

P.3d 1). As such, this Court reviews a “lower court's determination of credit for time served ... for legality and we exercise de novo review.

*State v. Pennington*, 2022 MT 180, ¶ 18, 410 Mont. 104, 517 P.3d 894.

“Ineffective assistance of counsel claims are mixed questions of law and fact which we review de novo.” *Wright*, at ¶ 7.

## VI. ARGUMENT

### A. The State provided insufficient evidence that Mr. Lane was guilty, beyond a reasonable doubt, of criminal possession of dangerous drugs

Taking in all the evidence, or lack thereof, in light most favorable to the State of Montana, no rational trier of fact could convict Mr. Lane of Criminal Possession of Dangerous Drugs.

In reviewing an insufficiency of evidence claim, the Court must determine “whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

*Christensen*, at ¶ 11 (citing *LaMere*, at ¶ 13).

At Mr. Lane’s trial, the district court instructed the jury that the State must prove beyond a reasonable doubt: “(1) That the Defendant possessed the dangerous drug, methamphetamine; AND (2) That the Defendant acted purposely or knowingly.” DC Doc. 216; and Tr. Tr. at

191. The Court further instructed the jury that “A person acts knowingly with respect to a specific circumstance defined by and [sic] offense, when the person is aware of that circumstance.” Tr. Tr. at 162. Furthermore, “a person acts purposely when it is the person's conscious object to engage in conduct of that nature.” *Id.*

As defense counsel stated in her opening statement, “[I]t is a pretty simple case.” Tr. Tr at 198. Mr. Lane never argued against the substance found on the floor being methamphetamine. The issue was whether Mr. Lane purposely or knowingly possessed the methamphetamine.

The State could not produce a single witness who saw Mr. Lane handling the bag of meth. That is because no one saw him hold it, drop it, or leave it behind. In fact, initially, Ms. Wiles believed that the meth belonged to another customer who came to the counter to get change. This customer had a known penchant and history of drug use.

The first State’s witness was not even employed by Lucky Lil’s at the time of the incident. Ms. Wiles was the closest to witnessing whoever dropped the bag of meth, yet she did not see it either. She simply picked up the bag and secured it until Officer Lashinski arrived. Taking in all

the evidence presented by the State at trial, in the light most favorable to it, no rational trier of fact could have found Mr. Lane guilty of criminal possession of dangerous drugs beyond a reasonable doubt.

B. The court erred by failing to accurately credit Mr. Lane's pre-trial detention time against his deferred sentence.

Crediting Mr. Lane's pretrial detention time was far from the forefront of the court's mind on July 24, 2023. Credit for time served only came up at the conclusion of Mr. Lane's sentencing—seemingly as an afterthought. Only after the Court asked the State to prepare the Judgement and Sentence was the subject of credit broached. *See Sent. Tr.* at 15. The entire discussion of credit culminated in less than twenty words exchanged between the parties—two spoken by the court: “okay” and “yes,” with the rest from defense counsel. The State remained silent on the issue.

Correctly calculating and granting an indigent defendant credit for time served "is not a discretionary act, but a legal mandate." *Parks*, at ¶ 9 (citing *Hornstein*, ¶ 12). Montana Law is clear that, “A person incarcerated on aailable offense against whom a judgment of imprisonment is rendered must be allowed credit for each day of

incarceration prior to or after conviction.” Mont. Code Ann. § 46-18-403(1).

That statute was enacted to protect Mr. Lane and defendants in similar situations. The purpose of Mont. Code Ann. § 46-18-403 is “eliminating disparate treatment between indigent and nonindigent defendants.” *State v. McCaslin*, 2011 MT 221, ¶ 15, 362 Mont. 47, 260 P.3d 403 (citing *State v. Kime*, 2002 MT 38, ¶ 1, 308 Mont. 341, 43 P.3d 290 (overruled on other grounds). “[C]redit for time served is given so as not to penalize indigent defendants ...” *McCaslin*, at ¶ 9. The Court record is evident that the Office of Public Defender represented Mr. Lane. See Doc. 3, 9, 22. OPD is the very organization that was put into place to “provide effective assistance of counsel to *indigent* criminal defendants” like Mr. Lane. Mont. Code Ann § 47-1-102 (emphasis added). By not awarding Mr. Lane the 133 days of credit for the time he was incarcerated while his case was pending, the court further “penalized” Mr. Lane, an indigent defendant, in a way that a non-indigent defendant would not have been.

Furthermore, this Court has solidified that “a deferred imposition of sentence is in fact a sentence.” *State v. Kortan*, 2022 MT 204, ¶ 17,

410 Mont. 336, 518 P.3d 1283 (citing *State v. Thibeault*, 2021 MT 162, ¶ 21 n.16, 404 Mont. 476, 490 P.3d 105). Moreover, not only is it a sentence but “a judgment of imprisonment within the meaning of the statute which requires the crediting of time served to that deferred sentence.” *Ellsworth*, at ¶ 11. Thus, regarding deferred impositions of sentences, “credit for time served is applied to reduce time remaining on the deferral period in an identical manner as to any other sentence.” *Id.*

The record is crystal clear that Mr. Lane had one hundred and thirty-three days of credit for time served. DC Doc 220.

Mr. Lane’s credit for time served calculation was not a complex or hotly debated issue. In fact, it was made even simpler by Mr. Barrett from Probation and Parole, authoring an entirely separate Addendum memorializing this credit for time served. DC Doc 220.

Arrested	Released	Jail time Served
10.23.2020	10.27.2020	4 days
03.27.2022	04.06.2022	10 days
06.28.2022	07.22.2022	24 days
01.21.2023	04.26.2023	95 days
		133 days

Mr. Barrett drafted, filed, and served the Addendum upon both parties on July 6, 2023, two and a half weeks before the sentencing

hearing. Despite having more than adequate time to review this completely separate and distinct document detailing Mr. Lane's credit for time served, the discussion of credit was basically swept under the rug. Even more peculiar was the fact that the credit for time served that Mr. Lane earned was omitted entirely from the Judgment and Sentence. DC Doc. 223.

The sentencing transcript makes it clear that the parties were aware of the legal requirement that Mr. Lane, receiving a deferred imposition of sentence, was entitled to credit for time served in the same manner as a defendant receiving any other sentence. Sent. Tr. At 15. Moreover, Mr. Barret made calculating credit incredibly simple with his Addendum to the PSI Report detailing the credit for time served that Mr. Lane earned during pre-trial. DC Doc 220.

The Court clearly erred by not giving Mr. Lane 133 days' credit for time served and by failing to memorialize giving him any credit for time served in its written Judgment and Order. The case should be remanded back to the district court with instructions to credit Mr. Lane with 133 days' credit for time served against his four-year deferred imposition of sentence.

C. Mr. Lane's counsel provided ineffective assistance of counsel at the sentencing hearing because there was no plausible justification for the omission.

By failing to ask for the correct amount of credit for readily discernible time and by failing to “request that the court modify the written judgment to conform to the oral pronouncement,” Mr. Lane’s counsel provided ineffective assistance of counsel for which there was no plausible justification.

Both "Article II, Section 24, of the Montana Constitution and the Sixth Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, guarantee [Mr. Lane], the right to effective assistance of counsel." *Wright*, at ¶ 9 (*State v. Larsen*, 2018 MT 211, ¶ 7, 392 Mont. 401, 425 P.3d 694).

To establish an ineffective assistance of counsel claim under the *Strickland*'s two-part test a criminal defendant must: “(1) demonstrate that ‘counsel's performance was deficient or fell below an objective standard of reasonableness’ and (2) ‘establish prejudice by demonstrating that there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been

different.” *Larsen*, at ¶ 7 (quoting *State v. Koughl*, 2004 MT 243, ¶ 11, 323 Mont. 6, 97 P.3d 1095).

“Ineffective assistance of counsel claims are appropriate for review on direct appeal, when 'no plausible justification' exists for the actions or omissions of defense counsel.” *Wright*, at ¶ 10 (defense counsel was ineffective for failing to direct the court to the Alternative Sentencing Authority statute as authority for her client’s eligibility for a deferred sentence).

While everyone in the criminal justice system is incredibly busy, especially the employees of the Office of Public Defender, there was no plausible justification for Mr. Lane’s counsel’s failure to ask for 133 days' credit for time served against his deferred imposition of sentence, versus the 33 that she did ask for. Furthermore, there was no plausible justification for sentencing counsel’s failure to “request that the court modify the written judgment to conform to the oral pronouncement” under Mont. Code Ann. § 46-18-116 (2).

MCA § 46-18-116 (2) states:

If a written judgment and an oral pronouncement of sentence or other disposition conflict, the defendant or the prosecutor in the county in which the sentence was imposed may, within 120 days after filing of the written judgment, request that the

court modify the written judgment to conform to the oral pronouncement.... The defendant and the prosecutor waive the right to request modification of the written judgment if a request for modification of the written judgment is not filed within 120 days after the filing of the written judgment in the sentencing court.

There was no plausible justification for counsel not to file a request to modify the written judgment to comport with the oral judgment, when the court did agree to give Mr. Lane credit, albeit 100 days less than he had earned.

While it is unequivocal that defense counsel's omissions were deficient, it is equally clear that those omissions prejudiced Mr. Lane. As a result of his attorney failing to point to the correct amount of credit for time served that he was entitled to, he was shorted at least 100 days of credit—133 days if going by the written judgement. That deficit extends his deferred sentence by that amount, keeping him on probation and restraining his liberty by that many more days.

## **VII. CONCLUSION**

In light of the above issues, the State failed to provide sufficient evidence to prove beyond a reasonable doubt that Mr. Lane was guilty of criminal possession of dangerous drugs. Mr. Lane's conviction must be vacated and his case dismissed.

Alternatively, suppose this Court affirms Mr. Lane's conviction. In that case, this case must be remanded to the district court with instructions to amend the judgment to reflect the 133 days he served prior to his conviction.

Respectfully submitted this 3<sup>rd</sup> day of October 2025

*/s/ Kelli A. Cummings*  
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### VIII. CERTIFICATE OF COMPLIANCE

Under the Montana Rules of Appellate Procedure, I certify that the Appellant's Opening Brief is printed with a proportionately-spaced Century Schoolbook typeface of 14 points, is double-spaced except for footnotes and lengthy quotes, and does not exceed 10,000 words. The exact word count, as calculated by my Microsoft Word software, is 3,493, excluding tables and certificates.

Dated this 3rd day of October 2025

*/s/Kelli A. Cummings*

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## CERTIFICATE OF SERVICE

I, Kelli Cummings, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 10-03-2025:

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