

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA 25-0294

K.B.,

Petitioner and Appellant,

vs.

THE STATE OF MONTANA,

Respondent and Appellee.

OCT 27 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPELLANT'S REPLY BRIEF

On Appeal From The Montana First Judicial District Court
Lewis & Clark County
Before teh Hon. Kathy Seeley

APPEARANCES:

K.B.

[Contact information
redacted to protect
privacy, as this case
pertains to a Youth
Court case]

Appellant, pro se

AUSTIN M. KNUDSEN
Montana Attorney General
TAMMY K. PLUBELL
Deputy Attorney General
215 N. Sanders
Helena, MT 59620

KEVIN DOWNS
Lewis & Clark Cnty Atty
228 Broadway
Helena, MT 59601

Attorneys for Appellee

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I. ARGUMENT

A. The State's Failure to Respond on Issues 1, 3, and 4 Should Be Deemed an Admission That K.B.'s Arguments Are Well Taken

[T]he Court of Appeals' decision to reverse based on an argument that the State failed to make on appeal, and that Thomas never had the opportunity to address, deprived Thomas of fair notice that the issue was in play.... See Day v. McDonough, 547 U.S. 198, 210 ... (2006) ... This lack of notice left Thomas without a meaningful opportunity to dispute the grounds on which the court [reversed grant of relief].

Thomas v. Payne, 142 S. Ct. 1 (Sotomayor, concurring) (cleaned up).

The State argues that K.B. is time-barred, because he should have filed a direct appeal by June 10, 2004, and did not do so. See Resp., p. 10. It also argues that his supposed failure to timely appeal the Youth Court's facially invalid second disposition invokes the procedural bar contained in MCA § 46-21-105(2). Id., at 11.

These contentions fail to rebut the fact that procedural bars, including time bars, do not apply in any case where a party is deprived of liberty pursuant to a facially invalid judgment. The Youth Court exceeded statutory authority by imposing new conditions upon K.B. in 2004, and the State provides no argument to the contrary.

The State likewise declined to support the lower court's improper characterization of K.B.'s collateral attack on the disposition as an appellate, rather than original, proceeding. The lower court had jurisdiction to remedy errors by this Court.

Furthermore, the State does not dispute that the lower court abused its discretion by denying K.B.'s Motion for a Protective Order and violated his constitutional right of privacy by revealing confidential details from a sealed and expunged Youth Court case.

The State also did not dispute that the District Court had an obligation to "afford the parties fair notice and an opportunity to present their position before acting on its own initiative to dismiss a petition." Davis v. State, 2008 Mt 226, ¶ 24, 334 Mont. 300, 187 P.3d 654; citing Day v. McDonough, 547 U.S. 198, 209 (2006).

Because the State declined to argue against each of the above positions, this Court should rule in K.B.'s favor on issues 1, 3, and 4. This would render Issue 2 moot; thus the Court should decline to address Issue 2 unless this Court holds that an exception to the mootness doctrine applies.

This Court is under no obligation to make arguments on behalf of the State that the State elected not to make. See, e.g., Day, at 210 ("If, as this Court has held, '... judges have no obligation the act as counsel or paralegal to pro se litigants, '... then by the same token, they surely have no obligation to assist attorneys representing the State.") (cleaned up).

However, if this Court feels strongly about a particular argument that the State chose to waive, this Court still has an obligation to provide K.B. with "fair notice that the issue [is] in play." Thomas, 142 S. Ct. at 1; see also Race v. Salmonsens, 131 F.4th 792, 798 (9th Cir. 2025), wherein the Court held that:

It should now be axiomatic that "a person is entitled to notice before adverse judicial action is taken against him."

(emphasis in original); citing Herbst v. Cook, 260 F.3d 1039, 1043; Day, at 210, et al. For instance, this Court might inform the State of any deficiencies and entertain an amendment to its Answer, as suggested in Day, at 209. What the Due Process Clause would not

permit is for this Court to devise an argument against K.B.'s and then rule in favor of that argument without affording K.B. an opportunity to rebut that argument. See, e.g., Race, 131 F.4th at 796-97 (cleaned up):

It may well be that, after Race is provided notice and an opportunity to respond, he will have nothing more to offer in defense of his delay. So be it Neither our decision in Herbst nor the Supreme Court's decision in Day ... authorizes an exception to the requirement that the court give a [party] notice and an opportunity to respond.... We will not retreat from that holding today.

As is demonstrated below, the State's procedural bar arguments do not rebut K.B.'s arguments in Issues 1, 3 and 4.

1. The State's Procedural Bar Arguments Did Not Address the Holdings in Lott, et Seq., that Procedural Bars Are Not Applicable to Facially Invalid Dispositions

When the delegates ratified the 1972 Constitution, they intended, at a minimum, that an individual [deprived of liberty] pursuant to a facially invalid [disposition] ... have the ability to challenge its legality.

Lott v. State, 2006 MT 279, ¶ 22, 334 Mont. 270, 150 P.3d 337 (en banc). The above finding regarding the Delegates' intent was supported by sufficient evidence to convince seven perfectly reasonable minds, one of whom still sits on this Court today.

Relying upon that finding, this Court has consistently held that an individual who is deprived of liberty pursuant to a judgment that a court lacked the authority to impose may challenge that judgment at any time, even when the individual is otherwise procedurally barred. See id.; State v. Southwick, 2007 Mt 257, ¶¶ 17-19, 339 Mont. 281, 169 P.3d 698; see also State v. Keech, 2025 MT 169, ¶ 18, 423 Mont. 226, 573 P.3d 311 (collecting cases).

In In re H.R., 2023 Mt 210, ¶¶ 11, 18, 404 Mont. 46, 537 P.3d

874, this Court held that:

The plain language of § 41-5-208, MCA.... does not grant the Youth Court authority without pleading and proving violation of a disposition to impose additional conditions, such as sexual offender registration.

Accord, In re A.D.T., 2015 MT 178, ¶ 13, 379 Mont. 452, 315 P.3d 682.

Just like it did with H.R., the First Judicial Youth Court exceeded its authority by imposing a second disposition with additional conditions when transferring supervisory authority under § 41-5-208, MCA. Unlike with A.D.T., the State never pleaded or proved that H.R. or K.B. violated the terms of their dispositions pursuant to § 41-5-208(4), and thus the error was not harmless.

The State has not argued that requiring K.B. to register as a condition of his Youth Court disposition would not implicate a liberty interest, nor does it have a basis for doing so. In 2008, this Court provided relief to a defendant whose sentence had terminated in the year 2000. State v. Samples, 2008 Mt 416, ¶ 9, 347 Mont. 292, 198 P.3d 803. Samples was still being deprived of liberty by a requirement that he register at a higher risk level, or "Tier", than might be appropriate. Id., ¶ 34.

It is an interest in avoiding ostracism, loss of employment opportunities, also such a designation likely involves verbal or even physical harassment.

Id., ¶ 31, citing Noble v. Bd. of Parole & Post-Prison Supervision, 327 Ore. 485, 964 P.2d 990, 995-96 (Or. 1998), et al.

K.B.'s liberty interest is stronger than Samples', because K.B., if provided relief, would have no duty to register and no record of his Youth Court adjudication whatsoever, enabling him to "enter

adult society with a clean slate rather than forever branded" by his "youthful misdeeds". In re S.G.-H.M., 2021 MT 176, ¶¶ 19-20, 404 Mont. 531, 490 P.3d 1248.

This Court should remand with instructions to vacate the lower court's order dismissing K.B.'s Petition and correct the underlying facially invalid disposition, pursuant to Southwick and H.R. The State has not proffered any argument to the contrary; this Court should presume that the State declined to rebut K.B.'s argument because K.B.'s argument was correct. MCA § 46-1-602(27).

2. If This Court Reverses on Issues 1 or 2, It Should Clarify That District Courts Have Original, Rather Than Appellate, Jurisdiction in Resolving Petitions for Postconviction Relief

As K.B. mentioned in his Opening Brief, pp. 13-14, the lower court believed it lacked authority to remedy errors by this Court, because district courts do not possess appellate jurisdiction over Montana's Supreme Court. However, the remedies provided by MCA Title 46, Chapter 21 are available when a judgment is

subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, [etc.]

§ 46-21-101(1), and despite its use of the words "conviction" and "sentence", PCR remains available to remedy errors by Youth Courts pursuant to MCA § 41-5-1421.¹ The State has not argued to the contrary. Accordingly, this Court should clarify for the lower court the basis and extent of its jurisdiction in postconviction cases.

1 A youth court proceeding "is a remedial civil proceeding rather than a criminal proceeding", but nevertheless invokes the same procedural safeguards as a sentence because it can result in a deprivation of liberty. In re V.K.B., 2022 Mt 94, ¶ 25 n. 4, 408 Mont. 392, 510 P.3d 66.

3. The State Does Not Dispute That the Lower Court Violated K.B.'s Fundamental Right of Privacy by Revealing Details from His Sealed and Expunged Youth Court Case

Even if K.B.'s claims were properly barred by the lower court, this does not change the fact that K.B.'s "juvenile file" was supposed to have been "destroyed". Op. Br., Ex. 4; see also *id.*, Ex. 2, 3; State v. K.A.B., DA 22-0601, 2022 Mont. LEXIS 1078, *1-2 ("on September 11, 2014, upon motion, the District Court entered an order to destroy the court files.")

In issuing its Order denying K.B.'s Petition, the lower court:

- a. failed to adopt appropriate control methods to ensure adequate integrity, security, and confidentiality of electronic records maintained by the clerk of district court, in violation of MCA § 41-5-220(1)(a);
- b. failed to render K.B.'s destroyed records "inaccessible and unrecoverable and disposed of in a manner in which confidentiality is protected," in violation of MCA § 41-5-220(2);
- c. disclosed a formal youth court record, in violation of MCA § 41-5-221; and
- d. otherwise violated K.B.'s objectively reasonable right of privacy, in violation of Art. II, Sec. 10 of the Mont. Const.

The State does not dispute any of the above statements of law, each of which K.B. presented in his Opening Brief, pp. 14-18. Accordingly, this Court should remand with instructions to vacate the lower court's denial of K.B.'s motion for a protective order.

Any protective order issued should require that the lower court's order dismissing K.B.'s Petition and any other material

containing private information be sealed. The lower court should do so regardless of whether this Court vacates the Order of Dismissal in its entirety, or merely the portion denying K.B.'s request for a protective order.

B. The State's Procedural Bar Arguments Do Not Merit Affirming the Lower Court's Dismissal

1. The State's Time Bar Argument is Incorrect

In K.B.'s 2004 § 46-18-116 motion, K.B. presented two distinct arguments. First, K.B. argued that:

(a) the lower court's written record of judgment failed to match its oral pronouncement of disposition, because it ordered K.B. to register while pronouncing sentence for burglary in DC 2003-66, then wrote that K.B. should be required to register as a condition of his Youth Court disposition in DJ 2003-02.

Second, K.B. argued that:

(b) the Youth Court exceeded its authority by imposing new conditions while transferring jurisdiction under § 41-5-208(1).

The State maintains that K.B. only presented argument (b). See Response, p. 10. However, it is apparent from the face of K.B.'s 2004 motion that K.B. presented both arguments. See Motion, as attached to K.B.'s Opening Brief in DA 22-0740 as Ex. C, p. 8:

[a] As a preliminary matter, these conditions were pronounced in the Court's sentence as the court was addressing the conditions of probation in the adult criminal matter of CDC 2003-66. Contrary to the oral pronouncement of this sentence, the Court's written judgment reflects that these conditions were imposed pursuant to the disposition under the Juvenile Order. Because the written judgment does not accurately reflect the oral pronouncement, it is in error.

[b] At the same time, the Court's written order reflects that the motion to transfer supervisory authority from juvenile probation services to adult probation services was to "ensure compliance with the Court's previous disposition." See page 1-2 of Judgment and Order, filed May 11, 2004. However, the Court's written order also includes additional conditions of probation not previously included within the Court's previous disposition. Therefore the Court's written order is not only inconsistent with the oral pronouncement of sentence, but it is internally inconsistent as to its terms.

K.B.'s argument (a), i.e. that the oral pronouncement and the written judgment conflicted, was proper under MCA § 46-18-116(2). Argument (b), i.e. that the written order was "internally inconsistent as to its terms," appears to have been a request to correct a factually erroneous judgment under MCA § 46-18-116(3).

Regardless of how argument (b) is characterized, argument (a) was, without question, proper under 46-18-116(2), and it remained pending until 2022.

Another court reached this same conclusion in a binding, final judgment on the merits in 2015. See Op. Br., Exhibit 6, p. 21:

Simply put, the Motion to Correct or Modify Sentence was not decided. Consequently, this Court agrees with [K.B.] that the May 17, 2004 Order had no enforceable effect. Whether [K.B.] was required to register as a sexual offender was never finally determined, and as a result, [K.B.] had no decision of the First Judicial District from which he could appeal.

The State contends that argument (b) was not proper under § 46-18-116 and could only have been raised on direct appeal. This ignores the fact that argument (a) was proper under 46-18-116, and that K.B. could not appeal until it was resolved in 2022.

Another court has already reached this exact same conclusion, and the State has presented no argument as to why that holding should be denied preclusive effect. As the other court held, K.B. could not appeal until the court decided his motion.

2. The State's Procedural Bar Argument Fails, Because
K.B. Needed to Wait Until Judgment Was Final to Appeal

If K.B.'s argument (b) is viewed as an argument that the Youth Court's disposition was illegal, rather than internally inconsistent, the State is correct that § 46-18-116 was not the proper vehicle for seeking relief. See State v. Peterson, 2011 MT 22, ¶ 14, 359 Mont. 200, 247 P.3d 731, quoting § 46-18-116(3), MCA.

The court may correct a factually erroneous sentence or judgment at any time. Illegal sentences must be addressed in the manner provided by law for appeal and postconviction relief.

However, this does not mean that the Court had no authority to provide K.B. relief on that argument. Illegal sentences must be corrected via appeal or postconviction, rather than post-trial motions, Peterson, ¶ 14, but K.B.'s civil Youth Court disposition² remained remedial under M. R. Civ. P. 60(b)(4)³.

K.B.'s substantive 60(b) request should, of course, have been "deemed denied" after 60 days. Rules 60(c)(1); 59(f). But even then, K.B. still could not appeal until the court decided his 46-18-116(2) request. Furthermore, as discussed in Section A.1, procedurally barring the Youth Court's illegal disposition was unconstitutional.

The State simply is not correct in its argument that K.B. waived his claim that the disposition was illegal by moving for relief, then appealing from the denial of his motion.

2 "[A] youth court 'delinquent youth' proceeding is a remedial civil proceeding which, upon adjudication and disposition, does not result in a criminal conviction and sentence." In re D.A.T., 2022 MT 174, ¶ 13, 410 Mont. 1, 517 P.3d 157 (emphasis in original) (citing MCA § 41-5-106, and other sources).

3 This court looks to the substance of a motion, not simply its title. State v. Finley, 276 Mont. 126, 915 Mont. 208, 218 (1996); MCA § 1-3-219.

II. CONCLUSION

K.B. is entitled to relief from his facially invalid Youth Court disposition pursuant to the holdings in Southwick and H.R. The lower court possessed original jurisdiction to remedy errors by this Court on collateral review. And disclosing K.B.'s expunged record violated his right of privacy by disregarding statutes enacted by society's representatives. The State does not dispute any of this.

Due process requires this Court to either rule in K.B.'s favor on issues the State declined to contest, or, at a minimum, encourage the State to amend its answer so that K.B. can attempt to rebut any reason the Court sees why the lower court's judgment should be affirmed.

Lastly, the State's argument that K.B. was procedurally barred does not hold water. K.B. could not appeal from the Youth Court's unauthorized second disposition until his motion asking the lower court to fix the issue was resolved.

Another court has already reached this same conclusion in a final judgment. The State declined to contest that judgment via cross-appeal, and its failure to address this fact in its Response indicates that it has no argument to rebut it.

This Court should reverse and remand with instructions to vacate the lower court's Order of Dismissal for the reasons stated above.

Respectfully submitted this 22nd day of October, 2025.



K.B., pro se

CERTIFICATE OF SERVICE

I, K.B., hereby certify that on the date below, I served opposing counsel for the State at the addresses below, by placing a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF in the mailbox, postage prepaid, addressed as follows:

AUSTIN KNUDSEN
Montana Attorney General
TAMMY PLUBELL
Deputy Attorney General
215 N. Sanders
Helena, MT 59602

KEVIN DOWNS
Lewis & Clark Cnty Atty
228 Broadway
Helena, MT 59601

Attorneys for the State of Montana

DATED this ^{KB} ~~30th~~ day of October, 2025.

↑
22nd



K.B.
Appellant, pro se