IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0660

IN THE MATTER OF:

R.V.,

A Youth.

BRIEF OF APPELLEE

On Appeal from the Montana Sixteenth Judicial District Court,
Fallon County, The Honorable Nickolas C. Murnion, Presiding

APPEARANCES:

AUSTIN KNUDSEN
Montana Attorney General
CHRISTINE HUTCHISON
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
chutchison@mt.gov

DARCY L. WASSMANN
Fallon County Attorney
P.O. Box 760
Baker, MT 59313-0760

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

SCOTTI L. RAMBERG
Peace Law Group, LLC
3010 Santa Fe Court, Suite 222
Missoula, MT 59808

ATTORNEY FOR DEFENDANT
AND APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF THE ISSUES

1. Whether R.V. waived her claim that the district court relied on misinformation at disposition when R.V.'s counsel told the court Count III would carry a maximum term of five years if committed by an adult, R.V.'s disposition is within statutory parameters, and R.V. has not shown substantial prejudice because Mont. Code Ann. § 41-5-1522(1) considers the combined maximum penalty an adult would face for all counts, not just Count III.

2. Whether R.V. waived her as-applied constitutional challenge by failing to raise any constitutional challenge in the youth court.

3. Whether Mont. Code Ann. § 41-5-1513(1)(b), which permits a youth court to commit a youth to the Department of Corrections until the youth reaches 18 years of age, is facially unconstitutional because it treats youths differently than adult offenders.

STATEMENT OF THE CASE

On August 23, 2022, the youth court adjudicated R.V. a delinquent youth within the meaning of Mont. Code Ann. § 41-5-103(12)(a)[1] after R.V. entered admissions to eight offenses that would have constituted criminal offenses if

[1] Unless otherwise noted, all statutory references are to the 2021 Montana Code Annotated.

committed by an adult. (Doc. 43 at 3-4.) The youth court also adjudicated R.V. a serious juvenile offender within the meaning of Mont. Code Ann. § 41-5-103(39) based on her admission to committing an offense that would be considered a felony if committed by an adult, and the offense was against a person, property, or involved dangerous drugs. (*Id.*) The court placed R.V. on formal probation with Youth Probation Services for a term of 24 months and gave her credit for 202 days previously served in detention. (*Id.* at 4.)

On August 10, 2023, the State filed a Petition to Revoke Probation based on allegations that R.V. had committed numerous violations of her probation conditions. (Doc. 45.) R.V. admitted to 13 of the alleged violations. (Doc. 52.1.)

At the dispositional hearing on September 19, 2023, R.V.'s counsel raised two statutory challenges to the probation officer's recommendation that the court commit R.V. to the Department of Corrections (DOC) until she turns 18 or is sooner released. (9/19/23 Tr. at 26-17.) R.V. asserted that Mont. Code Ann. § 41-5-1513 does not prohibit a youth court from imposing a determinate term of years and, because R.V. had already spent time in detention, a commitment until she turned 18 could violate Mont. Code Ann. § 41-5-1522. (*Id.*)

The youth court revoked R.V.'s probation and committed R.V. to the DOC until age 18 or sooner released by the DOC, with recommended placement at Five

County Treatment and Youth Rehabilitation Center. (Doc. 57 at 3, attached to Appellant's Br. as App. A.)

STATEMENT OF THE FACTS

I. R.V. declared a delinquent youth and serious juvenile offender

On February 2, 2022, the State petitioned the youth court to declare R.V. a delinquent youth and serious juvenile offender. (Doc. 5.) The State explained R.V. had committed eight offenses that would constitute criminal offenses if committed by an adult, and one would constitute a felony. (Doc. 3 at 1-2.) R.V. committed the offenses when she was 11 years old, and the offenses were committed with two other youths. (*Id.* at 3, 5.)

On May 2, 2021, R.V., 12-year-old J.C., and R.V.'s 14-year-old sister C.V., snuck out of J.C.'s grandmother's home in Baker, Montana, between 1 and 1:30 a.m. (*Id.* at 4.) The three girls attempted to steal a red vehicle that morning around 6:30 a.m. (*Id.*) The owner called law enforcement and reported the girls were inside the vehicle and that the vehicle was started, but he did not believe they were able to put the vehicle into gear. (*Id.*) The girls fled after the owner yelled at them. (*Id.*) The vehicle was worth at least $2,075. (*Id.* at 10.)

The youths were eventually located the following evening. (*Id.* at 5.) R.V. and her sister C.V. refused to speak with law enforcement and were released to

their mother. (*Id.* at 5-6.) J.C. and her parents met with law enforcement and J.C. described the events leading to law enforcement's involvement. (*Id.* at 6.) J.C. indicated that they had gone searching for a vehicle to steal and were checking unlocked cars for money for gas. (*Id.*) She said they had planned to drive to Riverton, Wyoming, where R.V. and C.V. used to live. (*Id.*)

J.C. said they had taken over $50 from a silver car and $11 from a white car. (*Id.* at 6.) J.C. explained that when they attempted to steal the red vehicle, they were unable to put it in gear and a man yelled at them. (*Id.*) After that, J.C. said they talked about walking to Plevna, Montana, to steal a vehicle to drive to Billings, Montana, where they could pick up C.V.'s and R.V.'s cousin who was able to drive. (*Id.*)

J.C. said they accessed another vehicle they intended to steal but ultimately decided against it because the vehicle belonged to their friend's mother. (*Id.*) The girls took a wallet from the vehicle and discarded it in a dumpster. (*Id.*) The girls later entered another vehicle they planned to steal but ultimately decided not to because they did not want "to steal from an old person." (*Id.* at 7.)

J.C. said the three of them had tobacco and alcohol in their possession at the time. (*Id.* at 7.) J.C. took law enforcement to the places she had described, and law enforcement was able to ascertain who owned the silver car, found the wallet in the

dumpster and returned it to its owner, and found the bottle of liquor and dumped it out. (*Id.* at 8.)

On December 10, 2021, C.V.'s and R.V.'s mother reported that the girls left home without permission. (*Id.* at 8.) She said the girls had gotten into a vehicle and started it but then fled. (*Id.* at 8-9.) The vehicle the girls accessed without permission was worth at least $2,250. (*Id.* at 9.)

On January 11, 2022, R.V., C.V., and J.C. stole a lanyard with a car key and door fob from a high school student at the high school gym. (*Id.* at 9.) R.V. and C.V. told their mother they had taken the key and told her where they left it. (*Id.*) The key was found where the girls indicated but there was no lanyard or fob with it. (*Id.*)

On January 13, 2022, law enforcement saw a white van owned by J.C.'s grandmother spinning its tires and the officer noticed there was no driver in the driver's seat. (*Id.*) C.V. was hiding on the outside of the passenger door and R.V. and J.C. were in the van. (*Id.*) The law enforcement officer put the vehicle in park and took the key from the ignition. (*Id.*) The three girls told him they were taking the vehicle to drive to Riverton, Wyoming, to pick up friends, and then they were going to go to Denver, Colorado. (*Id.* at 9-10.) The vehicle's owner had not given J.C. permission to drive the vehicle. (*Id.*)

Based on these incidents, the State petitioned the court to declare R.V. a delinquent youth and a serious juvenile offender. (Doc. 5.) The State alleged that R.V. had committed eight offenses that would constitute crimes if committed by an adult, and one of which would constitute a felony. (*Id.* at 2-9.) The State specifically stated it was not designating the case as an extended jurisdiction juvenile prosecution case. (*Id.* at 9-10.) R.V. initially denied the allegations but subsequently entered admissions to all eight counts. (Doc. 43 at 2-3.)

Prior to disposition, Probation Officer Leigh Colarchik prepared a Social History and Recommendations for the youth court. (Doc. 39.) She outlined child protective services' involvement with R.V.'s family, both in Wyoming and in Montana. (*Id.* at 2.) She said R.V. had been enrolled as a sixth grader in the fall of 2021 but her attendance was sporadic, and her grades were poor. (*Id.*) R.V. had stopped going to school and said she was doing home school. (*Id.*) However, R.V. was never enrolled in home school or an online education program. (*Id.*)

Officer Colarchik noted that R.V. had been placed in a group home for a short time in 2019. (*Id.*) R.V. had been in the Cascade County Regional Youth Services Center for 45 days from February 2, 2022, until March 19, 2022. (*Id.* at 2-3.) R.V. spent the next 75 days in secure detention at the "5Cs facility in St. Anthony, Idaho." (*Id.*) R.V. was released to her mother on June 2, 2022, and the following day, R.V.'s mother placed R.V. into the Family Stabilization Program at

the Ted Lechner center in Billings, Montana. (*Id.*) R.V. was transferred to shelter care on July 23, 2022, and was scheduled to be released on August 19, 2022. (*Id.*) R.V. was completing schoolwork while in the Cascade County Regional Youth Services Center and while in the detention center in Idaho. (*Id.*)

R.V. had been diagnosed with posttraumatic stress disorder, oppositional defiant disorder, and substance abuse. (*Id.* at 9.) Officer Colarchik included an initial clinical assessment completed by Youth Dynamics. (*Id.* at 9-18.) During the assessment, R.V. disclosed that she had been in a stolen vehicle a few months ago and that a gun had been in the vehicle. (*Id.* at 6.) R.V.'s mother also said that R.V. and C.V. liked to huff oven cleaner and other chemicals. (*Id.*) R.V. admitted to huffing in the past and talked about times she had run away from home. (*Id.*) R.V. said she had missed so much school that she had been held back two years. (*Id.*) R.V. said she did not like to listen to adults or do what they ask. (*Id.* at 6-7.) R.V. explained "that her mother will leave them alone for long periods of time and she has to take care of herself and the younger siblings, so why should she listen to her mother." (*Id.* at 7.) R.V.'s mother agreed that she left the children alone for long periods. (*Id.*)

Officer Colarchik recommended that R.V. be declared a delinquent youth and serious juvenile offender and that the court place her on formal probation for

18 months. (*Id.* at 3.) She included 25 recommended conditions of probation. (*Id.* at 3-4.)

On August 23, 2022, the youth court declared R.V. a delinquent youth and a serious juvenile offender. (Doc. 43 at 4.) The court placed R.V. on formal probation with Youth Probation Services for 24 months "with credit for two-hundred two (202) days of time the Youth previously served in detention."[2] (*Id.*) The court imposed 25 conditions of probation as recommended by Officer Colarchik. (*Id.* at 5-9.)

II. Revocation of probation

Probation Officer Sarita Fenner reported that R.V.'s compliance with supervision on formal probation was poor. (Doc. 45 at 9.) R.V. attended school sporadically and inconsistently for a time. (*Id.*) However, in March 2023, school officials finally withdrew R.V. from school due to her lack of attendance and unwillingness to complete schoolwork. (*Id.*)

R.V. was placed on house arrest with a GPS monitor in April 2023. (*Id.*) While on house arrest, R.V. had weekly violations, but oftentimes she violated

[2] R.V. did not request the transcript from the disposition hearing and the record does not indicate how the court arrived at the amount of credit. The Social History and Recommendation outlines R.V.'s placement for 198 days during the pendency of the case. (Doc. 39 at 2-3.) However, a portion of that time was spent in shelter care, not detention. (*Id.*)

every day. (*Id.*) R.V. admitted to drinking alcohol, using substances, running away, staying out all night, and getting into physical altercations. (*Id.*) R.V. had numerous contacts with the Billings Police Department but officers often returned her home without issuing her citations. (*Id.*)

On August 10, 2023, the State petitioned to revoke R.V.'s probation. (Doc. 45.) The State alleged R.V. had violated five of her probation conditions:

> 1. R.V. violated her condition requiring her to obey all laws by stealing a pair of Nike Air Jordan shoes from Scheels on June 5, 2023.
>
> 2. R.V. violated her condition requiring her to reside with her parents, abide by their rules, and keep them informed of her activities and whereabouts at all times:
>
> a. R.V. left home on March 1, 2023, without permission.
>
> b. R.V. left home on April 11, 2023, without permission and stole her mother's money.
>
> c. On April 13, 2023, R.V. was reported as a runaway and returned home by the Billings Police.
>
> d. On June 10, 2023, R.V. left home without permission to attend a movie and drive around with a relative.
>
> e. On June 29, 2023, R.V. left home without permission.
>
> f. On July 20, 2023, R.V.'s siblings told their mother R.V. had been involved in an altercation a few days prior and that R.V. had been stabbed during the altercation.
>
> g. On July 31, 2023, R.V.'s mother reported R.V. was still leaving without permission and had been taking a younger sibling with her.

h. On August 1, 2023, R.V. left home and refused to return.

i. On August 7, 2023, R.V.'s mother reported R.V. as a runaway.

3. R.V. violated her condition prohibiting her from controlling, consuming, possessing, buying or selling any alcoholic beverages, drugs, or inhalants:

a. When law enforcement returned R.V. home after she was reported as a runaway on April 13, 2023, R.V. was intoxicated and had a bottle of UV Blue in her backpack, which was reportedly stolen from Albertson's.

b. On April 14, 2023, R.V. tested presumptively positive for alcohol and marijuana.

c. On May 30, 2023, R.V. admitted she had consumed alcohol on May 28, 2023.

d. On June 30, 2023, R.V.'s mother reported that R.V. had smoked marijuana and had two bottles of wine that she was drinking.

4. R.V. violated her condition requiring her to attend school/an alternative education/vocational program regularly and to perform to the best of her ability because her lack of attendance and unwillingness to complete schoolwork led school officials to withdraw her from school in March 2023.

5. R.V. violated her condition to submit to electronic monitoring or house arrest upon a violation of her probation rules by refusing to charge her GPS monitor, committing multiple violations of home arrest by leaving without permission, and admitting to running away, staying out all night, and getting into physical altercations.

(Doc. 45 at 2-6.) The State said it was not designating the case as an extended jurisdiction juvenile prosecution. (*Id.* at 7.)

At the detention hearing, Officer Fenner testified that she was R.V.'s current probation officer and that up until the day prior, R.V. had been under courtesy supervision by Youth Court Services in the Yellowstone County Thirteenth Judicial District. (Doc. 47.1; 8/11/23 Tr. at 11.) Officer Fenner explained they were no longer willing to continue with the courtesy supervision because of R.V.'s violations and noncompliance. (8/11/23 Tr. at 11.) She explained that she had looked into other facilities for R.V. but most would not agree to take her, and others did not have an available bed. (*Id.* at 11-14.) She said many could not provide the specific services R.V. needed. (*Id.*)

The youth court questioned Officer Fenner at the hearing and Officer Fenner confirmed there had been an allegation that R.V. had witnessed a homicide earlier that summer. (*Id.* at 23.) She also confirmed there was an allegation that someone held a gun to R.V.'s head that week and threatened R.V. (*Id.*)

R.V.'s mother said that she could not take R.V. back into the family home at that time. (*Id.* at 34.) She explained that she had limited resources to provide and care for the other five children in the home and said she was not able to control R.V. or prevent her from running away again. (*Id.* at 33-34.) She indicated that one of her other children was currently in shelter care at the Ted Lechner facility. (*Id.* at 34.)

The court said R.V.'s case was "an unfortunate case for the Court. The Court had high hopes that [R.V.] would actually get the services that she needs. That was always the Court's desire that the—that this—this situation would work but unfortunately it's broken down." (*Id.* at 36-37.) The court concluded that detention was required to protect other persons' property but also to protect R.V. (*Id.* at 37.) The court ordered that R.V. would be held in secured detention at the Ted Lechner Youth Detention Center. (*Id.* at 38.)

R.V. admitted most of the allegations in the petition to revoke her probation. She admitted that she had stolen the Nike Air Jordans, left home without permission on March 1, 2023, had been returned home by the Billings Police after she was reported as a runaway on April 13, 2023, left home without permission on June 10, 2023 to attend a movie and drive around with a relative, left home without permission on June 29, 2023, had been in an altercation and stabbed a few days before July 20, 2023, had been leaving home without permission on July 31, 2023 and bringing her younger sibling with her, left home on August 1, 2023 and would not return, had been reported as a runaway on August 7, 2023, tested positive for alcohol and marijuana on April 14, 2023, had consumed alcohol on May 28, 2023, had been withdrawn from school due to her lack of attendance and unwillingness to complete schoolwork, had been unwilling to charge her GPS monitor, and had

committed multiple home arrest violations by leaving without permission, staying out all night, and getting into physical altercations. (8/29/23 Tr. at 10-15.)

R.V. denied that she had stolen money from her mother and left without permission on April 11, 2023, Billings police had returned her home intoxicated and in possession of a bottle of UV Blue stolen from Albertsons, and that she had been smoking marijuana and drinking two bottles of wine on June 30, 2023. (*Id.*) The State dismissed the alleged violations that R.V. denied. (*Id.*)

Officer Fenner testified at the disposition hearing. She noted that R.V.'s original disposition ordered her to complete mental health and chemical dependency evaluations. (9/19/23 Tr. at 8.) However, the evaluator felt that R.V. was not sharing enough information to make any recommendations so the evaluations were not complete. (*Id.*) Officer Fenner recommended that the court revoke R.V.'s probation and commit her to the DOC until 18 or sooner released, and that she be placed at Five County "treatment and youth rehabilitation center in Saint Anthony, Idaho." (*Id.* at 8-9.) She said the evaluations could be completed while R.V. was in the facility, the facility provided education, and they would be able to provide some treatment as well. (*Id.* at 9.)

Officer Fenner said the typical length of stay for youths at the facility was six to nine months with a target release date around the eighth month. (*Id.* at 9-10.) The specific release date would depend on the youth's progress with any treatment

plans, education, and follow up recommendations. (*Id.* at 10.) Officer Fenner explained she would be working with a case manager at the facility to formulate a plan for R.V.'s return to the community, "based on any needs that she will have when she returns." (*Id.*) Officer Fenner had been working with a case manager at Youth Dynamics to make referrals to other placement options but, at the time, there were no other options available for R.V. (*Id.*) Part of the difficulty in finding alternative placements was R.V.'s incomplete evaluations. (*Id.* at 22.)

On cross-examination, R.V.'s attorney questioned whether R.V. had complied with her probation conditions for any period before the violations. (*Id.* at 11.) Officer Fenner said it was difficult to assess and that they gave R.V. quite a bit of grace when she returned to Billings, but she agreed it was probably about 5 months. (*Id.* at 11-12.) She also agreed that R.V. had been in detention about 40 days since the revocation proceedings began. (*Id.* at 11.)

R.V.'s attorney questioned where R.V. would be placed and whether she would still be on a DOC commitment after release from the facility in Idaho. (*Id.* at 13.) Officer Fenner anticipated they would be working towards releasing R.V. to live with her mother in around six to nine months. (*Id.*) She explained that the "sooner released" language in her recommended disposition was meant to provide an opportunity for R.V. to come back to the community rather than stay in a correctional facility until her 18th birthday. (*Id.* at 18.) Officer Fenner said she did

not believe it was an option anymore to commit a youth to the DOC until they were age 16. (*Id.* at 19.)

The court told Officer Fenner it believed they had discussed the issue of whether the statutes provide for any credit for time served in other cases and asked her position. (*Id.* at 20.) Officer Fenner said she believes they do and that the youth court granted credit in the initial disposition. (*Id.*) However, she did not believe credit could be applied to a DOC commitment until 18 or sooner released. (*Id.*)

The court discussed R.V.'s schooling and Officer Fenner said she had done very well and was doing her schoolwork while in secure detention. (*Id.* at 21.) The court asked about R.V.'s violations while on supervision and Officer Fenner explained that it got to the point that there were so many pings for R.V.'s location across Billings from 10 p.m. to 6 a.m., that she spent a large portion of her workdays just trying to trace where R.V. had been. (*Id.* at 23.) She said she was submitting a report to the County Attorney on a weekly basis. (*Id.*) The GPS monitoring service was no longer willing to offer R.V. services nor was Billings probation and youth court services. (*Id.* at 23-24.)

Officer Fenner said she wanted to see R.V. back in the community and that she had encouraged R.V.'s mother to take some additional parenting classes or seek counseling to prepare for her children's return. (*Id.* at 23-24.)

R.V.'s counsel challenged the State's interpretation of Mont. Code Ann. § 41-5-1513(1)(b) and said she read commitment until 18 or sooner released to be the maximum possible sentence available. (*Id.* at 26.) She noted that R.V. was 13 so that meant she would be committed to DOC for about 5 years. (*Id.*) Counsel did not believe that would be an appropriate term for R.V. (*Id.*) R.V.'s counsel told the court that there were "a few statutes" she would like to point out for the youth court. (*Id.*) First, she referenced the language in Mont. Code Ann. § 41-5-1522(1) and said it states that a youth may not be committed for a period longer than what an adult would face for the offense. (*Id.*) R.V.'s counsel said the sentencing range for the felony count for an adult would be 2 to 5 years. (*Id.* at 26-27.)

R.V.'s counsel also challenged language in Mont. Code Ann. § 41-5-1513 that states the department is responsible for determining an appropriate release date or alternative placement once a youth is placed in a correctional facility. (*Id.* at 27.) Counsel said she interpreted the statute to mean the court could determine the appropriate commitment term and DOC could determine the release date from the facility. (*Id.*)

Based on her interpretation of the statutes, R.V.'s counsel recommended that R.V.'s probation be revoked and that the court sentence her to 2 years in the DOC. (*Id.* at 28.) She said sentencing R.V. until she was 18 was excessive and questioned

whether R.V. could even be in custody until she was 18 based on the felony theft offense. (*Id.*)

The court pointed out R.V. was 13 and that she would turn 18 before the 5 years. (*Id.*) R.V.'s counsel agreed, but said R.V. already received 202 days of credit for time in detention and had spent another 40 days in detention during the revocation proceedings. (*Id.*)

After counsel for the State explained her interpretation of the statutes, the court asked if she interpreted Mont. Code Ann. § 41-5-1522(1) to limit how long DOC could place R.V. in the correctional facility, not how long R.V. could be supervised by DOC. (*Id.* at 31.) The State confirmed that the statute limited time in the facility, not the DOC term length. (*Id.*)

R.V.'s counsel agreed that the statute only limited time in the facility but said the limit should be placed in the sentence because there was no indication the DOC was tracking it independently. (*Id.* at 32.)

The court revoked R.V.'s formal probation, declared her a delinquent youth and serious juvenile offender, and committed her to the DOC until the age of 18 or sooner released with a recommendation that she be placed at the Five County Treatment and Youth Rehabilitation Center in Saint Anthony, Idaho. (*Id.* at 25.) The court indicated its reasons were due to the serious nature of R.V.'s violations,

her engagement in high-risk behaviors, and found the placement necessary for the protection of the public and R.V. (*Id.* at 35-36.)

SUMMARY OF THE ARGUMENT

R.V. waived her claim that the court relied on misinformation when imposing its disposition because it was R.V.'s counsel that advanced the 5-year maximum an adult would face if convicted of Count III. R.V.'s counsel incorrectly interpreted Mont. Code Ann. § 41-5-1522(1) to limit the amount of time R.V. could spend in a detention facility based only on the maximum term an adult could face for Count III. Montana Code Annotated § 41-5-1522(1) includes the maximum penalty an adult would face for *all* the offenses that brought the youth under the youth court's jurisdiction. An adult convicted of the 8 offenses that brought R.V. under the youth court's jurisdiction would face a maximum combined term of 10 years and 6 months.

R.V. waived any as-applied constitutional challenge because she failed to raise any constitutional challenge in the youth court. Rather than challenging the constitutionality of the statutes at issue, R.V. argued that the statutes supported her recommendation for a set term of years commitment instead of a commitment until she turns 18.

R.V. does not assert that she is raising a facial challenge to Mont. Code Ann. § 41-5-1513(1)(b); however, to the extent she raises a facial challenge, her claim fails. Youths facing a youth court disposition under Mont. Code Ann. § 41-5-1513(1)(b) are not similarly situated to adult offenders facing criminal sentencing for the same offenses.

ARGUMENT

I. Standard of review

This Court reviews a youth court's application and interpretation of the Youth Court Act for correctness. *In re S.M.K.-S.H.*, 2012 MT 281, ¶ 16, 367 Mont. 176, 290 P.3d 718.

Statutes enjoy a presumption of constitutionality and the person challenging a statute's constitutionality bears the burden of proving it unconstitutional beyond a reasonable doubt. *In re G.T.M.*, 2009 MT 443, ¶ 9, 354 Mont. 197, 222 P.3d 626. The constitutionality of a statute presents a question of law that this Court reviews de novo. *In re S.M.K.-S.H.*, ¶ 16.

II. R.V. waived her claim that the court relied upon misinformation because her attorney put forth the challenged information and R.V. acknowledges that the disposition is within statutory parameters.

On appeal of the order revoking her probation, R.V. asserts that the disposition was illegal because the youth court relied upon misinformation

regarding the maximum penalty for an adult offender committing the same felony theft offense. (Appellant's Br. at 9-11.) R.V. waived this claim because R.V.'s attorney advanced the challenged information regarding the maximum penalty for Count III. Further, Mont. Code Ann. § 41-5-1522(1) considers the maximum term an adult offender could face for all counts, not just Count III. An adult convicted of the offenses that brought R.V. under the youth court's jurisdiction would have faced ten years and six months of incarceration. R.V. waived her misinformation claim by actively advancing the incorrect information and because she has not demonstrated substantial prejudice.

Generally, this Court will not review an issue not raised below because the trial court should be allowed to address and correct any perceived errors. *In re K.M.G.*, 2010 MT 81, ¶ 36, 356 Mont. 91, 229 P.3d 1227. In the criminal law context, this Court allows an exception to this general rule when a defendant claims a sentence is illegal or exceeds statutory mandates, even if no objection was made at sentencing. *State v. Lenihan*, 184 Mont. 338, 343, 602 P.2d 997, 1000 (1979). This Court has subsequently explained that "a sentence is not illegal if it falls within statutory parameters." *State v. DeMarie*, 2025 MT 115, ¶ 26, 422 Mont. 208, 569 P.3d 602 (quoting *State v. Kotwicki*, 2007 MT 17, ¶ 8, 335 Mont. 344, 151 P.3d 892). The *Lenihan* exception does not apply to claims that the court failed to

comply with statutory procedural requirements. *In re K.M.G.*, ¶ 39; *State v. Youpee*, 2018 MT 102, ¶ 11, 391 Mont. 246, 416 P.3d 1050.

This Court has extended the *Lenihan* exception to allegations that a youth court disposition was illegal. *See In re K.J.R.*, 2017 MT 45, ¶ 16, 386 Mont. 381, 391 P.3d 71 (citation omitted). However, this Court has found that a defendant waived his claim that the trial court relied on misinformation at sentencing when the defendant adopted the incorrect information at sentencing. *State v. McLeod*, 2002 MT 348, ¶ 26, 313 Mont. 358, 61 P.3d 126. In such circumstances, the minimum due process requirements have been met if the offender was given an opportunity to explain, argue, and rebut the information that may lead to a deprivation of life, liberty, or property. *State v. Mainwaring*, 2007 MT 14, ¶ 16, 335 Mont. 322, 151 P.3d 52 (citation omitted). Additionally, this Court has long held that it "will not put a District Court in error for a ruling or procedure in which the appellant acquiesced, participated, or to which appellant made no objection," nor will it reverse a district court's decision "absent a showing of substantial prejudice by the complaining party." *In re F.L.F.L.K.*, 2025 MT 41, ¶ 15, 425 Mont. 1, 564 P.3d 844 (citation omitted).

Here, the alleged misinformation was supplied by R.V.'s counsel to support her recommendation that the youth court commit R.V. to the DOC for a set term of years rather than committing her until she was 18. Although R.V. acknowledges

that her disposition was within statutory parameters, R.V. asserts that the court's reliance on the misinformation nonetheless cannot be harmless because the DOC may believe "that R.V. may be kept for five years in a correctional facility, not three." (Appellant's Br. at 10.) However, R.V.'s assertion that she may only be held in a correctional facility for three years is incorrect. Both below and on appeal, R.V. only focuses on the potential max an adult could face for Count III, but Mont. Code Ann. § 41-5-1522(1) considers the max penalty an adult could face if convicted of *all* the offenses that brought the youth under the jurisdiction of the youth court.

"If a youth is found to have violated a term of probation, the youth court may make any judgment of disposition that could have been made in the original case." Mont. Code Ann. § 41-5-1431(3). When imposing a disposition on a delinquent youth, youth courts have more flexibility than a district court has when sentencing an adult offender. *Compare* Mont. Code Ann. § 46-18-201 and Mont. Code Ann. §§ 41-5-1512, -1513(1)(a)-(b). One option is to "commit the youth to the department for placement in a correctional facility or other appropriate program as determined by the department and recommend to the department that the youth not be released until the youth reaches 18 years of age." Mont. Code Ann. § 41-5-1513. "A youth may not be held in a correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed

on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court." Mont. Code Ann. § 41-5-1522(1).

R.V. was brought under the jurisdiction of the youth court after she committed eight offenses which would have constituted crimes if committed by an adult. R.V. focuses on the maximum penalty for Count III, which would carry a maximum penalty of three years for an adult, but ignores the maximum penalties for the remaining counts. If R.V. had been an adult, she could have faced up to six months on Count I, three years on Count III, six months on Count IV, five years on Count VI,[3] one year on Count VII, and six months on Count VIII. *See* Mont. Code Ann. §§ 45-6-202(2), -203(2), -301(7)(a)-(7)(b)(i), -308(2), 45-4-102(3), -103(3).; *State v. Strong (Strong 2)*, 2015 MT 251, ¶ 21, 380 Mont. 471, 356 P.3d 1078 (allowing simultaneous stacked charges if statutory language requires a "second or subsequent offense").

The combined maximum term of incarceration that could have been imposed on an adult convicted of the offenses that brought R.V. under the youth court's jurisdiction was ten years and six months. Even if Count VI was treated as a misdemeanor, the maximum term would have been six years. On September 19,

[3] The Agreement to Admit notes that the vehicle in Count VI was worth at least $2,250, meaning Count VI would also constitute a felony if committed by an adult. (Doc. 27 at 7.) Even if it were considered a misdemeanor, because it was a second offense, it would carry a maximum term of 6 months, and the total combined term for the offenses would have been 6 years.

2023, the youth court committed R.V. to the DOC until she turns 18 or the DOC releases her. R.V. will turn 18 in February 2028. *See* Doc. 5 at 1. Even if the DOC were to hold R.V. in a correctional facility until she turned 18, R.V. would be released from the facility 2,218 days before the combined total 10 years and 6 months would run.[4] Because R.V. will turn 18 nearly 6 and a half years before the max term an adult offender could have faced, there is no concern that R.V. could be held in violation of Mont. Code Ann. § 41-5-1522(1).

R.V. waived her claim that the youth court relied on misinformation in determining the appropriate disposition because she was the party that told the court the maximum penalty for Count III would be five years if the offense had been committed by an adult. Further, it would be inappropriate to reverse the court's disposition when R.V. cannot show that she was substantially prejudiced by her attorney's error regarding the potential max an adult could have faced for Count III.

III. Because R.V. did not raise any constitutional challenge in the youth court, she is precluded from raising an as-applied challenge on appeal.

On appeal, R.V. asserts for the first time that "the sentencing scheme used for R.V., both generally and as applied to R.V., violates Montana Constitutional

[4] Even if Count VI were considered a misdemeanor, R.V. would still be released 576 days before the combined 6 years would run.

protections guaranteeing due process and equal treatment under the law, and in particular that those under 18 will not be treated harsher than those over 18[.]" (Appellant's Br. at 5.) R.V. waived any as-applied constitutional challenge because she failed to raise any constitutional claim in the youth court.[5]

"A claimed violation of constitutional rights, like any other claim, is subject to waiver or forfeiture if not timely made." *State v. Hillious*, 2025 MT 53, ¶ 41, 421 Mont. 72, 565 P.3d 1218 (citation omitted); *Mainwaring*, ¶ 20 (citations omitted) ("constitutional issue is waived if not presented at the earliest opportunity"); *State v. Strong (Strong 1)*, 2009 MT 65, ¶¶ 12-13, 349 Mont. 417, 203 P.3d 848. In order to properly preserve a claim, a party must state the grounds for the objection or challenge that are "sufficiently specific." *In re B.I. & N.G.*, 2009 MT 350, ¶ 16, 353 Mont. 183, 218 P.3d 1235 (citation omitted). An objection that "does not specify what authority, rule, statute, or constitutional provision might be violated by the court's decision, is insufficient to preserve that issue on appeal." *State v. LaFreniere*, 2008 MT 99, ¶ 12, 342 Mont. 309, 180 P.3d 1161 (citation omitted). The contemporaneous objection/waiver rule likewise prohibits a party from raising new arguments or changing its legal theory on appeal. *State v. Martinez*, 2003 MT 65, ¶¶ 12, 18, 314 Mont. 434, 67 P.3d 207 (challenge alleging

[5] R.V. has not requested that this Court review any of her claims under plain error review and it is too late to do so in her reply. *State v. Johnson*, 2010 MT 288, ¶ 13, 395 Mont. 15, 245 P.3d 1113.

lack of particularized suspicion for the stop did not preserve the claim that officers exceeded the scope of the investigative stop).

As previously noted, this Court has carved out a narrow exception to the general waiver rule for claims that a sentence is illegal. *Lenihan*, 184 Mont. at 343, 602 P.2d at 1000. This Court will review unpreserved claims that a statute authorizing a sentence is facially unconstitutional under the *Lenihan* exception, but this Court will not review as-applied constitutional challenges raised for the first time on appeal. *State v. Parkhill*, 2018 MT 69, ¶ 16, 391 Mont. 114, 414 P.3d 1244 (citation omitted).

In the youth court, R.V. specifically identified two statutes in support of her argument for a determinate term, but she did not raise any constitutional challenges. Instead, R.V. argued that Mont. Code Ann. § 41-5-1513 did not prohibit the court from imposing a determinate term, and because R.V. was 13 years old and had already spent time in a correctional facility, committing her to the DOC until she turned 18 would violate Mont. Code Ann. § 41-5-1522. (9/19/23 Tr. at 26-33.) R.V. argued these statutes supported her dispositional recommendation; she did not assert that the statutes were unconstitutional or that the recommended term would violate her rights to equal protection or due process. R.V. waived her constitutional as-applied claim by failing to preserve it in the

youth court. Thus, R.V.'s constitutional claim can only be reviewed on appeal if—and to the extent—that it raises a facial challenge to the dispositional statutes.

IV. R.V. has not established that Mont. Code Ann. § 41-5-1513(1)(b) is facially unconstitutional because she has not identified similarly situated classes.

R.V. asserts that the sentencing scheme used in her disposition, "both generally and as applied to R.V.," violates her equal protection and due process rights. (Appellant's Br. at 5.) R.V. contends that Mont. Code Ann. § 41-5-1513(1)(b) treats offenders differently based upon their age at sentencing because it does not allow judicial discretion for a term length, nor does it account for credit for time previously served. (*Id.*) While R.V. never asserts that she is raising a facial challenge, this specific contention could be interpreted as a facial challenge to Mont. Code Ann. § 41-5-1513(1)(b). To the extent R.V. raises a facial challenge, her claim fails because she has not identified similarly situated classes.

Analysis of a facial challenge to a statute differs from that of an as-applied challenge. *Mont. Cannabis Indus. Ass'n v. State*, 2016 MT 44, ¶ 14, 382 Mont. 256, 368 P.3d 1131 (citing *State v. Whalen*, 2013 MT 26, ¶¶ 20-22, 368 Mont. 354, 295 P.3d 1055). Outside the context of a First Amendment challenge, a statute is facially unconstitutional only if the challenger establishes that no set of circumstances exists under which the challenged statutory sections would be valid,

"*i.e.,* that the law is unconstitutional in all of its applications." *Id.* (citations omitted).

As this Court has noted, a facial challenge to a legislative act is the most difficult challenge to successfully mount. *In re Marriage of K.E.V.*, 267 Mont. 323, 336, 883 P.2d 1246, 1255 (1994) (Trieweiler, J., concurring and dissenting). The fact that a statute could conceivably operate unconstitutionally under some hypothetical set of circumstances is insufficient to render the statute wholly invalid. *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see also Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973) ("a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court."). Facial invalidation of statutes is disfavored because it contravenes the "fundamental principle . . . that courts should . . . [not] formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (internal quotation marks omitted).

To prevail on an equal protection challenge, the challenging party "must demonstrate that the law at issue discriminates by impermissibly classifying individuals and treating them differently on the basis of that classification." *State v. Davison*, 2003 MT 64, ¶ 10, 314 Mont. 427, 67 P.3d 203 (citation omitted). The

first step is to "identify the classes involved, and determine if they are similarly situated." *In re S.M.K.-S.H.*, ¶ 26 (citation omitted.) "[T]wo groups are similarly situated if they are equivalent in all relevant respects other than the factor . . . constituting the alleged discrimination." *Planned Parenthood of Montana v. State*, 2024 MT 178, ¶ 27, 417 Mont. 457, 554 P.3d 153 (citations omitted). If the classes are not similarly situated, then the challenging party has failed to meet the first criterion, and it is unnecessary to analyze the challenge further. *In re S.M.K.-S.H.*, ¶ 26 (citation omitted).

This Court has determined that youths who were sentenced as adults under the Extended Jurisdiction Prosecution Act and adults sentenced for committing the same offenses are similarly situated classes for purposes of equal protection. *In re G.T.M.*, ¶ 12 (citation omitted). In that instance, the classes are similarly situated because adults and youths sentenced as adults face the same sentencing for committing the same offense. *Id.* However, that is a "markedly different factual scenario" than youths in the youth court system and adults in the criminal justice system that face different dispositions for committing the same offense. *In re S.M.K.-S.H.*, ¶ 29.

"Where a youth in the youth court system faces a disposition different from an adult who has committed the same offenses, [this Court] ha[s] held that the youth and the adult 'are not similarly situated with respect to Montana's sentencing

law for three reasons.'" *Id.* ¶ 28 (citation omitted). "Those reasons are: (1) juvenile commitment under the Youth Court Act is 'strictly for rehabilitation, not retribution'; (2) the 'liberty interest of a minor is subject to reasonable regulation by the state, to an extent not permissible with adults' under the doctrine of *parens patriae*; and (3) other jurisdictions persuasively have concluded that 'adults and juveniles are not similarly situated in those circumstances.'" *Id.* (citation omitted).

R.V. asserts that the youth court statute utilized in her disposition violates her rights to equal protection and due process because the term length is determined based solely off the youth offender's age at the time of disposition, which could result in the youth serving a longer term than an adult convicted of the same offense. (Appellant's Br. at 4-5, 11-17.) R.V. does not specifically identify the two classes in her analysis, but the State believes that the portion of her claim that reflects a facial constitutional challenge is comparing adults convicted and sentenced for an offense(s) with youths whose disposition for the same offense(s) is governed by Mont. Code Ann. § 41-5-1513(1)(b). R.V.'s claim fails because an adult offender and a youth offender facing different dispositions are not similarly situated classes.

Adult and juvenile offenders are intentionally treated differently than adults. Juveniles "have a 'lack of maturity and an underdeveloped sense of responsibility,' leading to recklessness, impulsivity, and heedless risk-taking." *Steilman v.*

Michael, 2017 MT 310, ¶ 15, 389 Mont. 512, 407 P.3d 313 (quoting *Montgomery v. Louisiana*, 577 U.S. 190, 207 (2016) (internal quotation marks omitted)). Juveniles are also "more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings." *Id.* (quoting *Montgomery*, 577 U.S. at 207) (internal quotation marks omitted).

As this Court has noted:

> Montana recognizes that youths are to be given special treatment by the courts. The youth court system is designed to promote individual rehabilitation and allow young people to learn positive lessons from their transgressions. In youth court, these young people are not subject to the same criminal sanctions as are adults. An express legislative purpose of the Montana Youth Court Act is 'to prevent and reduce youth delinquency through a system that does not seek retribution but that provides: (a) immediate, consistent, enforceable, and avoidable consequences of youths' actions; (b) a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders[.]'

In re Appeal of Cascade Co. Dist. Court, 2009 MT 355, ¶ 14, 353 Mont. 194, 219 P.3d 1255 (citations omitted).

The array of different possible dispositions in the Youth Court Act reflects the difference in purpose and treatment. *Compare* Mont. Code Ann. § 41-5-1513 *with* Mont. Code Ann. §§ 45-6-202(2), -203(2), -301(7)(a)-(7)(b)(i), -308(2), 45-4-102(3), -103(3). Even criminally convicted youths, which this Court has

determined *are* similarly situated to adult offenders, are permissibly treated differently for purposes of DOC commitments. *Strong 1*, ¶¶ 9, 17-26. Criminally convicted youth can be committed to the DOC for a longer term than an adult offender because it provides "enhanced flexibility with regard to treatment of youth offenders[.]" *Id.* ¶ 24. DOC commitments constitute less severe sentences than imprisonment. *Id.* ¶ 20. As this Court noted, the longer DOC provision for criminally convicted youths "provides a vehicle for a court, concerned about the severity of a crime committed by a youth, to guarantee long-term supervision of a youth offender without having to resort to a prison sentence." *Id.* ¶ 25. Adult offenders or criminally convicted youth committed to the DOC can be placed in the prison, appropriate community-based programs in prerelease centers, intensive supervision programs, or boot camp. *Id.* ¶ 21.

In contrast, youths who have been adjudicated a delinquent youth and/or have subsequently violated the conditions of their youth probation, have different placements available through the DOC. Mont. Code Ann. § 41-5-1523. The DOC Policy Directive states the DOC can place the youth in a program, facility, or home.[6] These placements may include a psychiatric residential treatment facility or other medical related programs, a chemical dependency program, any level of

[6] Available at https://cor.mt.gov/DataStatsContractsPoliciesProcedures/DataDocumentsandLinks/DOC-Policies-Manual.pdf.

group home care, any level of foster care, kinship care, placement with other approved individuals, or independent living. The youth may not be placed in a correctional facility that does not provide sound and sight separation from adult offenders. Mont. Code Ann. § 41-5-1522(2). If a youth is placed in a correctional facility, the correctional facility will determine a tentative length of stay within the first 30 days after admission. Mont. Admin. R. 20.9.703(1)-(2). A youth cannot "be held in a correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court." Mont. Code Ann. § 41-5-1522(1).

Under Mont. Code Ann. § 41-5-1513(1)(b), a youth court can commit a youth to the DOC for placement with a recommendation that the DOC not release the youth until the youth reaches 18 years of age. The varied placement options provide more flexibility to meet the Youth Court Act's purpose of providing supervision, care, rehabilitation, detention, competency development, and community protection for the youth. *See* Mont. Code Ann. § 41-5-102(2)(b). The commitment term length, which is based on the age of majority rather than a determinate term, also reflects these purposes and the goal of addressing these needs before the youths become adult offenders.

Sentence terms based in part on punishment, such as adult offenders and criminally convicted youth, are easier to set in precise units of time meant to provide punishment, deterrence, and rehabilitation within the frame commensurate with the criminal conduct. *See* Mont. Code Ann. § 46-18-101. The Youth Court Act's non-retributive purpose of providing supervision, care, rehabilitation, and competency development before a youth can become an adult offender is less amenable to a quantification based on a term of years rather than the age of majority.

R.V.'s case demonstrates an escalation in high-risk behaviors throughout her time in the youth court. While her initial conduct of stealing money and attempting to steal vehicles to drive out of state was concerning, over the next two years, her conduct grew increasingly more concerning. R.V. was frequently out-of-the-house all night, repeatedly ran away, and admitted she had been stabbed in an altercation. There had also been reports that she witnessed a homicide and had a gun held to her head in the week preceding her detention hearing. R.V.'s high-risk behaviors have increased as she has grown and her lack of candor with evaluators has made determining her specific needs and how long it will take to address them particularly challenging.

A commitment to the DOC until R.V. turns 18 or is sooner released allows the DOC maximum flexibility to continue to supervise and care for R.V., ensure

she completes her schooling, address her underlying mental health diagnosis, and ensure she does not return to her high-risk behaviors once she returns to the community.

R.V. asserts that Mont. Code Ann. § 41-5-1513(1)(b) is unfair because if she had been 16 or 17 her term would be shorter for the same offenses. (Appellant's Br. at 11.) However, the Youth Court Act provides many avenues, and a 16- or 17-year-old offender could have faced prosecution under the Extended Jurisdiction Prosecution Act for the same offenses. *See* Mont. Code Ann. § 41-5-1602(1)(a). In such case, if the youth subsequently violated the conditions of their stayed sentence imposed under Mont. Code Ann. § 41-5-1604(1)(a)(ii), that youth would face the possibility of an adult sentence. *See* Mont. Code Ann. § 41-5-1605(2)(b)(iii).[7]

This Court has repeatedly recognized that youth facing youth court dispositions are not similarly situated to adult offenders convicted of the same offense. The *only* thing youth facing youth court dispositions and adult offenders who committed the same offense have in common is that they have committed the same offense. Because R.V. has not identified two similarly situated classes, her facial constitutional challenge fails, and further analysis is unnecessary.

[7] Notably, the Youth Court Act recognizes that the youth would no longer be facing a purely non-retributive disposition and thus reduces the youth's adult sentence by the amount of time served prior to the revocation.

While R.V. waived any as-applied challenge and cannot utilize her own disposition to establish that Mont. Code Ann. § 41-5-1513(1)(b) is unconstitutional in all applications, her as-applied challenge establishes that the statute can be constitutionally applied even if she had met her burden of identifying two similarly situated classes. As previously addressed, R.V. will turn 18 well before the 10 years and 6 months an adult offender would have faced will have run.

R.V. asserts that the protections of Mont. Code Ann. § 41-5-1522(1) and Mont. Admin. R. 20.9.707(1)(a) are insufficient because her rights to due process on parole will be less than those "that would be afforded an adult who would after 3 years be free from both detainment and supervision requirements." (Appellant's Br. at 15-16.) While R.V.'s assertion is speculative and presents a claim that is not ripe, R.V. also misses that she entered admissions to all counts and the maximum penalty for all counts if committed by an adult is 10 years and 6 months. An adult offender would still be on parole. A youth facing a parole revocation is not similarly situated to an adult offender facing a parole revocation because they face drastically different sanctions. Should R.V. be released on parole and face an alleged violation of her conditions, she will have enhanced protections unavailable to an adult parolee suspected of violating parole. *Compare* Mont. Admin. R. 20.9.302, 20.9.308(5)(g) *with* Mont. Admin. R. 20.25.801(8) and (13).

R.V. has not met her burden to demonstrate that Mont. Code Ann. § 41-5-1513(1)(b) is unconstitutional beyond a reasonable doubt.

CONCLUSION

This Court should affirm R.V.'s disposition.

Respectfully submitted this 4th day of December, 2025.

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: */s/ Christine Hutchison*
CHRISTINE HUTCHISON
Assistant Attorney General

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 8,751 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Christine Hutchison
CHRISTINE HUTCHISON

CERTIFICATE OF SERVICE

I, Christine M. Hutchison, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 12-04-2025:

Darcy Lynn Wassmann (Govt Attorney)
Box 1136
Baker MT 59313
Representing: State of Montana
Service Method: eService

Tammy Ann Hinderman (Attorney)
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena MT 59620
Representing: R. V.
Service Method: eService

Scotti Ramberg (Attorney)
PEACE LAW GROUP, LLC
3010 Santa Fe Court, Suite 222
MISSOULA MT 59808
Representing: R. V.
Service Method: eService

Electronically signed by LaRay Jenks on behalf of Christine M. Hutchison
Dated: 12-04-2025