IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0482

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MARK ANDREW PARTRIDGE,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable Colette B. Davies, Presiding

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STATEMENT OF THE ISSUES

1. Whether Appellant waived his challenges to his sentence length when he failed to object in the district court.

2. Whether Appellant's claim that he did not voluntarily enter his guilty plea and his request to withdraw his guilty plea are properly before this Court when Appellant did not request to withdraw his guilty plea in the district court.

3. Whether Appellant's counsel was ineffective because he did not challenge the sentence length.

STATEMENT OF THE CASE

On June 28, 2023, the State charged Appellant Mark Andrew Partridge (Partridge) with one count of sexual abuse of children. (Doc. 2.) The charging documents provided that Partridge distributed a video of a child engaged in sexual conduct. *Id*.

The State subsequently filed an Amended Information adding one count of sexual intercourse without consent by accountability, and two additional counts of sexual abuse of children. (Doc. 10.) The parties entered into a plea agreement pursuant to Mont. Code Ann. § 46-12-211(1)(c). (Doc. 18 at 3.) Partridge agreed to enter a guilty plea to the sexual intercourse without consent by accountability charge, and in exchange, the State agreed to dismiss the three sexual abuse of

children charges and recommend a sentence of 100 years to the Montana State Prison (MSP) with 40 years suspended and a parole restriction for the first 25 years of the sentence. (*Id*. at 5.)

Partridge requested a hearing under Mont. Code Ann. § 46-18-222(2). (Doc. 21.) There, he argued that the mandatory minimum sentence was inapplicable because he suffered from an impaired mental capacity at the time of the offense. Michael Sullivan, who conducted Partridge's psychosexual evaluation, testified. (5/20/24 Tr. at 4-23.) Partridge also asked the court to consider a report by Dr. Dee Woolston (Woolston). (*Id*. at 24.)

Partridge asked the district court to apply the exception to the mandatory minimum and sentence Partridge to 50 years at MSP with 30 years suspended. (*Id*. at 32-33.) The State requested a 100-year sentence with 40 years suspended and asked that the court impose a 25-year parole restriction. (*Id*. at 28.)

The district court declined to apply the exception to the mandatory minimum in Mont. Code Ann. § 46-18-222(2). (5/20/24 Tr. at 38.) The court followed the State's recommendation and sentenced Partridge to 100 years at MSP with 40 years suspended and imposed a 25-year parole restriction. (*Id*. at 40.)

STATEMENT OF THE FACTS

I. The offenses

In June 2023, Montana Division of Criminal Investigation (DCI) Agent Woodland learned of an undercover operation run by the Federal Bureau of Investigation (FBI) out of Laredo, Texas.[1] (Doc. 9.) Partridge engaged in electronic communications with an undercover FBI agent. (*Id*.) There, Partridge told him that he was looking for "like mined [sic] taboo dads." (*Id*.) Partridge identified himself as "Mark" and told the agent he was into "anything and everything." (*Id*.) He told the agent he had a four-year-old son. (*Id*.)

Partridge asked if the undercover agent's children enjoy being sexually abused. (*Id*.) Partridge also asked if the undercover agent had engaged in penetration with his children and advised that it would not hurt them if the undercover agent used lubricant. (*Id*.) Partridge then shared a 27-second video of a three- to five-year-old child lying on his back while an adult female performed oral sex on the child. (*Id*.) Partridge continued to provide ideas on how the undercover agent could best prepare children for sexual penetration. (*Id*.)

Through the course of the investigation, law enforcement was able to identify Partridge. (*Id*.) Law enforcement also learned that Partridge resided in

[1] Because Partridge pleaded guilty, the State relies on the charging documents in its recitation of the facts.

Billings. (*Id*.) On June 27, 2023, law enforcement arrested Partridge and brought him in for questioning. (*Id*.) Partridge admitted that he spoke with the undercover agent and provided the agent with the child sexual abuse material (CSAM). (*Id*.) Partridge further acknowledged receiving CSAM from others, and that he directed others to engage in sexual activity with their own children. (*Id*.)

During the interview, Partridge spoke of his own son and detailed his interest in sexually abusing his child. (*Id*.) Partridge's son, identified as "K.", was born in 2019. (*Id*.) Partridge lived with the child and the child's mother in Billings from April to September 2019. (*Id*.) During that time, Partridge and the child's mother engaged in sexual intercourse while the child's mother performed oral sex on their infant. (*Id*.) Partridge denied touching the child himself while this was happening, but he continued to have sex with the child's mother while the child's penis was in her mouth. (*Id*.)

Law enforcement located text messages between Partridge and the child's mother from January 2020. (*Id*.) Partridge sent, "I would love to see ur pussy and our sons cock on ur pussy" and "Is his cock on ur pussy." (*Id*.) At the time, the child's mother was not living with Partridge. (*Id*.)

The DCI agent obtained the results of a forensic examination on Partridge's cell phone. (*Id*.) The agent observed 38 items that appeared to be CSAM. (*Id*.) One image appeared to be of an adult female orally stimulating the penis of a young

boy. (*Id*.) Another image consisted of a prepubescent child performing oral sex on an adult male. (*Id*.)

II. Change of plea and sentencing

On November 29, 2023, Partridge signed an Acknowledgement and Waiver of Rights by Guilty Plea and Plea Agreement. (Doc. 18.) He acknowledged that he understood his rights, the charges and the penalties in both the waiver of rights and during the colloquy with the district court. (Doc. 18 at 4; 11/30/23 Tr. at 4-8.)

During the sentencing hearing, Partridge called Michael Sullivan, who conducted Partridge's psychosexual evaluation. (5/20/24 Tr. at 4-23.) Partridge also provided a mental health evaluation conducted by Woolston. (11/30/23 Tr. at 10.) Sullivan testified that Partridge scored as a moderate risk sexual offender and recommended that prison was the most appropriate placement. (5/20/24 Tr. at 7.)

Sullivan testified that although Partridge suffered from mental health issues that would require ongoing medication and therapy services, he still had a reasonable understanding of right and wrong. (*Id*. at 13-16.) Sullivan opined that Partridge could understand what was right and wrong in a sexual context as well. (*Id*. at 16-17.) Partridge "demonstrated the ability to conform his behavior to expectations and standards in the community." (*Id*. at 17.) Sullivan confirmed that Partridge's mental illness did not cause his sexual deviance. (*Id*. at 19.)

Partridge argued that the district court should apply an exception to the mandatory minimum sentence under Mont. Code Ann. § 46-18-222(2) and find that Partridge suffered from significant mental impairment at the time of the offense. (*Id*. at 24.) The State contrasted Partridge's case with others in the area that had received the exception under Mont. Code Ann. § 46-18-222(2) and argued that Partridge did not meet the significant level of impairment necessary to qualify for the exception. (*Id*. at 25-26.)

The State recommended that Partridge serve a 100-year sentence at MSP with 40 years suspended and requested a 25-year parole restriction. (*Id*. at 28.) Partridge argued that the court should apply the exception to the mandatory minimum and sentence him to 50 years at MSP with 30 years suspended, significantly less than the State's recommendation. (*Id*. at 33.)

In the alternative, Partridge argued that he should be sentenced to 100 years with 75 years suspended. (*Id*. at 32.) Partridge's counsel acknowledged that given the conduct at issue, it was likely that the court "could be inclined to . . . institute a parole restriction in excess of 25 years." (*Id*. at 33.) The district court declined to apply the exceptions to the mandatory minimum sentence, reasoning that there was no causal connection between the mental impairment and the offense at issue. (*Id*. at 38.)

The court noted significant concerns about the safety of children related to Partridge's conduct. (*Id*. at 39.) Partridge took part in the sexual exploitation of his own infant son and encouraged others to sexually assault and rape their own children. (*Id*.) The district court also referred to its duty to issue sentences that are commensurate with other individuals who have committed similar offenses. (*Id*. at 40.) The court recognized that the State provided several examples of sentences for similar conduct in excess of what it recommended for Partridge. (*Id*.) The district court accepted the State's recommendation and sentenced Partridge accordingly. (*Id*.)

STANDARD OF REVIEW

This Court reviews a criminal sentence imposing over one year of incarceration for legality. *State v. Moore*, 2012 MT 95, ¶ 10, 365 Mont. 13, 277 P.3d 1212. A sentence is not illegal if it falls within statutory parameters. *State v. Garrymore*, 2006 MT 245, ¶ 9, 334 Mont. 1, 145 P.3d 946.

Whether a plea is voluntary is a mixed question of law and fact that this Court reviews de novo for correctness. *State v. Newbary*, 2020 MT 148, ¶ 5, 400 Mont. 210, 464 P.3d 999 (citing *State v. Warclub*, 2005 MT 149, ¶ 24, 327 Mont. 352, 114 P.3d 254).

Claims of ineffective assistance of counsel are questions of law and fact, which this Court reviews de novo. *Whitlow v. State*, 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861. When considering whether counsel was deficient, this Court does not analyze the conduct with hindsight, but rather presumes that counsel's conduct falls within a range of acceptable professional assistance, and a defendant must overcome that presumption. *State v. Schowendgerdt*, 2018 MT 7, ¶ 31, 390 Mont. 123, 409 P.3d 38.

SUMMARY OF THE ARGUMENT

Partridge waived his challenges to his sentence by failing to object below. Claims that a district court failed to abide by a statutory requirement are not claims that fall within the *Lenihan* exception. Further, the district court did not exceed its statutory authority when it imposed a 25-year parole restriction, resulting in a legal sentence.

The precedent that a criminal defendant must first move to withdraw his guilty plea in the district court is well established. This Court will not consider the voluntariness of a guilty plea for the first time on appeal when the defendant did not request in district court that he be allowed to withdraw his plea. Here, Partridge never moved the district court to withdraw his guilty plea, so his claim that his

guilty plea was involuntarily entered, and that this Court should allow him to withdraw it, is not properly before this Court.

Partridge's claims that his counsel was ineffective for failing to object to his sentence are inappropriate for direct appeal because the record does not indicate why his counsel did not object. There are reasonable tactical reasons why counsel would not have objected, and Partridge cannot establish a reasonable probability that he would have received a different sentence if his counsel had objected. Further, Partridge's counsel advocated for a significantly reduced sentence, thus his performance did not fall outside the wide range of reasonable professional assistance.

ARGUMENT

I. This Court should decline to review Partridge's claims that his sentence was illegal because his claims do not fall within the purview of the *Lenihan* exception.

Generally, this Court will not review issues raised for the first time on appeal. *State v. Strizich*, 2021 MT 306, ¶ 19, 406 Mont. 391, 499 P.3d 575 (citation omitted). The narrow sentence-specific *Lenihan* exception applies only if a sentence is alleged to be illegal or exceeds statutory mandates. *State v. Thibeault*, 2021 MT 162, ¶ 9, 404 Mont. 476, 490 P.3d 105; *State v. Lenihan*, 184 Mont. 338,

342-43, 602 P.2d 997, 999-1000 (1979). [2] A court cannot impose a sentence that exceeds the length allowed by statute. *DeShields v. State*, 2006 MT 58, ¶¶ 11-12, 331 Mont. 329, 132 P.3d 540.

A. Partridge waived his objections to his sentence.

This Court has since clarified that a "court's failure to abide by a statutory requirement raises an 'objectionable sentence, not necessarily an illegal one that would invoke the *Lenihan* exception'" if the sentence does not exceed statutory mandates. *State v. Ingram*, 2020 MT 327, ¶ 17, 402 Mont. 374, 478 P.3d 799 (quoting *State v. Kotwicki*, 2007 MT 17, ¶ 13, 335 Mont. 344, 151 P.3d 892). Under the narrow *Lenihan* exception, this Court will only consider "unpreserved assertions of error that a particular sentence or sentencing condition was either facially illegal (*i.e.*, of a type or character not authorized by statute or otherwise in

[2] This Court also recognizes the plain error review exception to the contemporaneous waiver/objection rule for claims alleging errors implicating a criminal defendant's fundamental rights under the plain error doctrine. However, this Court invokes plain error review sparingly, on a case-by-case basis, and only where the defendant shows that failing to review the claimed error may result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the trial or proceedings, or compromise the integrity of the judicial process. *State v. West*, 2008 MT 338, ¶ 23, 346 Mont. 244, 194 P.3d 683. Even if plain error review could be potentially available if properly raised, this Court "will not apply the plain error doctrine when it was raised for the first time in a reply brief." *State v. King*, 2013 MT 139, ¶ 40, 370 Mont. 277, 304 P.3d 1. Partridge has not requested this Court exercise plain error review as to any of his claims, and it is too late for him to request it in his reply brief. This Court should decline to exercise plain error review for any of Partridge's claims.

excess of the statutorily authorized range or limit for that type of sentence or condition)," or sentences that are "facially legal but authorized by a facially unconstitutional statute." *Thibeault*, ¶ 9, (collecting cases).

As this Court noted in *Kotwicki*, even if an appellant attempts to invoke the *Lenihan* rule by claiming their sentence was illegal, if the appellant's argument is really about failure to abide by a statutory requirement rather than exceeding statutory bounds, the sentence is not illegal and does not fall within the purview of the *Lenihan* exception. *Kotwicki*, ¶ 15 (citing *State v. Nelson*, 274 Mont. 11, 906 P.2d 663 (1995); *State v. Swoboda*, 276 Mont. 479, 918 P.2d 198 (1996)).

In both *Nelson* and *Swoboda*, the appellants argued that the district court imposed an illegal sentence because the court failed to consider sentencing alternatives as required by statute before imposing a prison sentence upon a nonviolent offender. *Nelson*, 274 Mont. at 20, 906 P.2d at 668; *Swoboda*, 276 Mont. at 482, 918 P.2d at 298. Like Partridge, neither Nelson nor Swoboda objected at sentencing. This Court held that *Lenihan* did not apply because the claims were regarding failure to abide by statutory requirements, but the sentences were still within the permissible range. *Nelson*, 274 Mont. at 20, 906 P.2d at 668; *Swoboda*, 276 Mont. at 482, 918 P.2d at 298. This Court noted the claim could not fall within *Lenihan* when, even if the courts had considered alternatives to

incarceration, the courts still could have imposed the same sentences. *Nelson*, 274 Mont. at 20-21, 906 P.2d at 669; *Swoboda*, 276 Mont. at 482, 918 P.2d at 298.

Here, although the district court did not consider the proper statutory requirement in imposing the parole restriction, its error led to an objectionable sentence, not an illegal one. The maximum sentence Partridge could have received under Mont. Code Ann. § 45-5-503(4)(a)(i) (2017) was a 100-year sentence to MSP. The statute sets the mandatory minimum sentence and corresponding parole restriction at 10 years. *Id.* The district court was well within its discretion to impose a lengthier parole restriction under Mont. Code Ann. §§ 45-5-503(4)(a)(i) and 46-18-202(2) and noted that it did so under that authority.[3]

By imposing the 25-year parole restriction, the district court permissibly raised the floor of Partridge's sentence; it did not impermissibly raise the ceiling. Even if the district court had considered the 10-year parole restriction, it still could have imposed the same sentence. Partridge's claim does not fall within *Lenihan*. *See Nelson*, 274 Mont. at 20-21, 906 P.2d at 669; *Swoboda*, 276 Mont. at 482, 918 P.2d at 298. This Court should decline to review Partridge's legal sentence.

[3] Partridge states that the district court amended its reasons for sentence in the judgment, including reference to Mont. Code Ann. § 46-18-202(2) in its written judgement, but noting that the district court did not reference that specific statute in its oral pronouncement.

B. Partridge's sentence is not facially illegal.

Partridge relies primarily on *State v. Southwick*, 2007 MT 257, 339 Mont. 281, 169 P.3d 698 in his assertion that his sentence is illegal as an ex post facto application of the law. *Southwick* is easily distinguished from this case. In *Southwick*, the defendant committed an offense under a statute that had a maximum sentence of five years to the Department of Corrections (DOC). *Id.* ¶ 27. Instead of sentencing Southwick to the maximum five-year sentence, the district court sentenced him to a 10-year sentence to the DOC with 5 years suspended. *Id.* It was this error that led this Court to find that the *Lenihan* exception applied because the district court clearly exceeded the statutory maximum sentence. *Id.* ¶¶ 23, 28.

Here, because the district court did not exceed the maximum 100-year sentence it could have imposed, and because the district court had statutory authority to impose a parole restriction of any length, up to the maximum 100-year sentence under Mont. Code Ann. § 46-18-202(2), Partridge's sentence does not render it capable of review under *Lenihan.* Contrary to *Southwick*, Partridge's sentence is not facially illegal, and this Court should decline to review it.

If this Court finds that the district court violated the ex post facto provisions, the only remedy is to remand to the district court for resentencing. An illegal sentence "is invalid only as to the excess." *Southwick* (citing *DeShields*, ¶ 11.)

II. Partridge's claim that he did not knowingly enter his guilty plea is not properly before this Court because he never moved the district court to withdraw his plea.

For the first time on appeal, Partridge argues that his guilty plea was not knowing or voluntary. (Appellant's Br. at 17.) Partridge fails to acknowledge that this Court has held that a request to withdraw a plea must first be raised in district court. *State v. Holt*, 2006 MT 151, ¶ 38, 332 Mont. 426, 139 P.3d 819; *State v. Butler*, 272 Mont. 286, 900 P.2d 908 (1995); *State v. Radi*, 250 Mont. 155, 818 P.2d 1203 (1991). Partridge did not file a motion to withdraw his plea in the lower court. Because Partridge "made no motion to withdraw his plea in District Court, withdrawal of the plea is not properly an issue before this Court." *Holt*, ¶ 39. *See also Butler*, 272 Mont. at 292, 900 P.2d at 912; *Radi*, 250 Mont. at 159, 818 P.2d at 1206 ("Initially, the grant or denial of a motion to withdraw a plea of guilty is within the sound discretion of the trial court."); *State v. Martz*, 233 Mont. 136, 760 P.2d 65 (1988); *In re Hardy*, 188 Mont. 506, 614 P.2d 528 (1980).

This matter is well settled. Also, the cases Partridge primarily relies upon to convince this Court that he did not knowingly or voluntarily enter his pleas are cases where the defendants/appellants moved to withdraw their pleas in the district court and the district court denied their motions. *See State v. Hendrickson*, 2014 MT 132, ¶¶ 9, 11, 375 Mont. 136, 325 P.3d 694; *State v. Boucher*, 2002 MT 114, ¶¶ 5-7, 309 Mont. 514, 48 P.3d 21; *State v. Melone*, 2000 MT 118, ¶¶ 8-9,

299 Mont. 442, 2 P.3d 233; *State v. Sanders*, 1999 MT 136, ¶¶ 7, 11, 15, 294 Mont. 539, 982 P.2d 10.

In *Holt*, the Court recognized that whether a motion to withdraw a plea should be granted is a fact intensive determination. *Id.* (citing *State v. Lone Elk*, 2005 MT 56, 326 Mont. 214, 108 P.3d 500). Going forward on a plain error review "would require pure speculation for this appellate Court to determine" the unpreserved issues. *Holt*, ¶ 42.

Unlike *Holt*, Partridge did not request this Court review his claim under plain error. *Id.* ¶ 40. As previously noted, as a general rule, issues not preserved by contemporaneous objection are waived and subsequently not subject to review on appeal. *Strizich*, ¶ 19.

As this Court has repeatedly recognized, Partridge has a statutory remedy allowing him to move to withdraw his guilty plea in the district court. Under Mont. Code Ann. § 46-16-105(2), Partridge has one year after his judgment becomes final to move to withdraw his guilty plea. His conviction does not become final until he has completed the appeal process. Mont. Code Ann. § 46-16-105(2)(a)-(c). Consequently, Partridge cannot demonstrate that failing to review his claim would result in a miscarriage of justice since he can still move to withdraw his guilty plea in the district court.

Finally, if this Court were to allow Partridge to circumvent the statutory process for moving to withdraw a guilty plea, and if this Court were to ignore its well-established precedent, other defendants will similarly challenge their guilty pleas for the first time on appeal.

III. Partridge's ineffective assistance of counsel claims should not be reviewed on direct appeal because they are not record-based.

A. Law applicable to ineffective assistance of counsel claims

This Court reviews ineffective assistance of counsel claims applying the two-prong test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). A defendant arguing ineffective assistance of counsel has a burden to demonstrate by a preponderance of the evidence that: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defense. *Baca v. State*, 2008 MT 371, ¶ 16, 346 Mont. 474, 197 P.3d 948.

Trial counsel's performance is deficient if it falls "below an objective standard of reasonableness measured under prevailing professional norms and in light of the surrounding circumstances." *Whitlow*, ¶ 20. In evaluating whether counsel's performance was deficient, this Court indulges "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id*. ¶ 15 (quoting *Strickland*, 466 U.S. at 689). This highly deferential

review of counsel's performance is necessary to "eliminate the distorting effects of hindsight." *Worthan v. State*, 2010 MT 98, ¶ 10, 356 Mont. 206, 232 P.3d 380.

The mere fact that counsel failed to take an available measure or action is generally insufficient to establish that counsel's performance was deficient. *State v. Mahoney*, 264 Mont. 89, 101-02, 870 P.2d 65, 73 (1994). A claim of "ineffective assistance of counsel will not succeed when predicated upon counsel's failure to make motions or objections which, under the circumstances, would have been frivolous, which would have been, arguably, without procedural or substantive merit, or which, otherwise, would likely not have changed the outcome of the proceeding." *Heddings v. State*, 2011 MT 228, ¶ 33, 362 Mont. 90, 265 P.3d 600.

To establish prejudice, a defendant must prove a "reasonable probability" that, but for counsel's errors, "the result of the proceeding would have been different." *State v. Dineen*, 2020 MT 193, ¶ 25, 400 Mont. 461, 469 P.3d 122 (citation omitted). "A defendant must do more than just show that the alleged errors of a trial counsel 'had some conceivable effect on the outcome of the proceeding.'" *Id.* (citation omitted). The likelihood of a different result must be "substantial." *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

B. Review on direct appeal

Before reaching the merits of an ineffective assistance of counsel claim on direct appeal, this Court must first determine whether the claim is record- or

nonrecord-based. *State v. Rovin*, 2009 MT 16, ¶ 34, 349 Mont. 57, 201 P.3d 780. This Court will review ineffective assistance of counsel claims on direct appeal if the claims are based solely on the record. *Id.* ¶ 24. Because there is a "strong presumption that counsel's actions are within the wide range of reasonable professional assistance, a record which is silent about the reasons for the attorney's actions or omissions seldom provides sufficient evidence to rebut this presumption." *State v. Sartain*, 2010 MT 213, ¶ 30, 357 Mont. 483, 241 P.3d 1032 (quotation marks and citation omitted). Accordingly, if the record does not explain "why" counsel did or did not take an action, the ineffective assistance of counsel claim is more suitable for a petition for postconviction relief. *Id.* A nonrecord-based claim may be addressed on direct appeal, "[i]n rare instances," if there is no plausible justification for defense counsel's actions or omission. *State v. Fender*, 2007 MT 268, ¶ 10, 339 Mont. 395, 170 P.3d 971.

C. Discussion

1. Partridge's claim is not record-based.

Partridge's ineffective assistance of counsel claim should not be reviewed on direct appeal because it is not record-based. Partridge argues he received deficient counsel at sentencing because his counsel failed to raise the appropriate mandatory minimum parole restriction. The record does not indicate why Partridge's counsel did not object. Without knowing what Partridge's counsel knew and why he failed

to challenge Partridge's sentence, it is impossible to determine whether his conduct was deficient.

2. Partridge cannot survive scrutiny under *Strickland*.

However, even if the record did reflect Partridge's counsel's reasons, he still cannot meet the requirements of the *Strickland* test. This Court has held that when a sentence does not exceed a statutory maximum, an ineffective assistance claim connected to sentencing must fail. *State v. Pine*, 2023 MT 172, ¶ 36, 413 Mont. 254, 548 P.3d 390. In *Pine*, counsel requested a sentence well under the 100-year statutory maximum, and less than the State's requested sentence. Because the defense attorney argued for a lesser sentence, his performance did not fall outside the wide "range of reasonable professional assistance." *Pine*, ¶ 37 (quoting *Schowendgerdt*, ¶ 31).

Here, Partridge's attorney did the same. Partridge's counsel negotiated a plea agreement with the State that allowed him to argue for sentencing exceptions to the mandatory minimum under Mont. Code Ann. § 46-18-222.

/ / /

CONCLUSION

This Court should affirm Partridge's sentence. If the Court disagrees with the State's analysis, the proper remedy is to remand for sentencing under the appropriate version of Mont. Code Ann. § 45-5-503(4)(a)(i).

Respectfully submitted this 11th day of February, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,144 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Selene Koepke
SELENE KOEPKE

CERTIFICATE OF SERVICE

I, Selene Marie Koepke, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 02-11-2026:

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