

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0110

STATE OF MONTANA,

Plaintiff and Appellee,

vs.

DEANA LOUANN THOMAS,

Defendant and Appellant.

APPELLANT'S OPENING BRIEF

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable Judge Brett Linneweber, Presiding

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I. STATEMENT OF THE CASE

The Yellowstone County District Court unlawfully sentenced Ms. Thomas in her 2014 case, where she pled guilty to endangering the welfare of children and possession of dangerous drugs. *Thomas v. Dep't of Corr.* (2025), 422 Mont. 552, 570 P.3d 532. Instead of the 5-year statutory maximum, the court sentenced her to 8 years DOC. Elec. Doc. 14: Def. Ex. A.

Despite the events in that 2014 case occurring between 2014 and 2016, this matter on appeal stems from the unlawful sentence and subsequent unlawful detention in that 2014 case. That sentence and detention landed Ms. Thomas back before the Yellowstone County District Court.

On December 8, 2022, while Ms. Thomas was being held on a probation issue related to her 2014 unlawful sentence, she called her mother. Elec. Doc. 2, 14, 21; COP & Sent. Tr. at 9. During that call, she made statements regarding some fentanyl pills at her mother's home and instructed her mother to sell them. *Id.* The contents of this conversation led law enforcement to Ms. Thomas's mother's home, where they found the pills in question. Elec. Doc. 1. As a result of the

search, the State of Montana charged Ms. Thomas with Criminal Possession with Intent to Distribute. Elec. Doc. 4. During the duration of Ms. Thomas's case, her defense counsel filed a motion to dismiss on the basis that the phone call was not admissible based on the fact that she was unlawfully detained pursuant to an illegal sentence. Elec. Doc. 14.

Without a hearing, the district court denied Ms. Thomas's motion. Appendix A: Order Denying Defendant's Motion to Dismiss. After reserving her right to appeal this denial, Ms. Thomas changed her plea pursuant to the plea agreement and pled guilty to Criminal Possession of Dangerous Drugs with Intent to Distribute. COP & Sent. Tr. at pg. 11, Elec. Doc 36. The court sentenced Ms. Thomas to a three-year commitment to DOC to run concurrently with her Carbon County and federal cases. Appendix B: Judgement. Ms. Thomas then initiated this appeal.

II. STATEMENT OF THE ISSUES

Whether Ms. Thomas preserved her right to appeal the lower court's denial of her motion to dismiss when she entered a guilty plea at the change of plea hearing.

Whether the Yellowstone County District Court erred in denying Ms. Thomas's motion to dismiss despite her being unlawfully detained pursuant to an illegal sentence.

III. STATEMENT OF THE FACTS

Back on December 5, 2014, the State of Montana, through Yellowstone County, charged Ms. Thomas with assault with a weapon, endangering the welfare of children, possession of dangerous drugs, and possession of drug paraphernalia in DC-2014-976. Elec. Doc. 14: Def. Ex. A. On January 28, 2016, Ms. Thomas pled guilty to endangering the welfare of children and drug possession. *Id.* In exchange, the State moved to dismiss the assault with a weapon and possession of drug paraphernalia charges. *Id.* The parties agreed to recommend an eight-year suspended sentence on both counts to run consecutively to a Missoula County sentence. *Id.* At the sentencing hearing on March 28, 2016, the Yellowstone County District Court followed the proposed plea agreement and sentenced Ms. Thomas to an eight-year¹ DOC suspended sentence. *Id.* Despite the Missoula County matter not yet taking place,

¹ This Court recently found that the Yellowstone County District Court imposed illegal sentences, eight years, on these charges when the statutory maximum was five years. *Thomas v. Dep't of Corr.* (2025), 422 Mont. 552, 570 P.3d 532.

the court specified that this sentence should run consecutively to her Missoula County case. *Id.* In addition, the court awarded Ms. Thomas forty-four days' credit for time served due to her pretrial incarceration. *Id.*

Between the State charging Ms. Thomas with the above charges and her change of plea, on June 17, 2016, the State, through Missoula County Attorney's Office, charged her with criminal possession of dangerous drugs, possession of drug paraphernalia, and theft. Elec. Doc. 28: State's Ex. 2. Approximately ten days after her sentencing on the Yellowstone County matter, Ms. Thomas proceeded to sentencing on the Missoula County matter. *Id.* The court sentenced her to a two-year DOC suspended sentence, which was to run consecutively to the Yellowstone County matter, DC-2014-976. *Id.*

Ultimately, both the Yellowstone County District Court and the Missoula County District Court revoked Ms. Thomas's respective sentences. *See* Elec. Doc. 14: Def. Ex. B; Elec. Doc. 28. The Yellowstone County District Court revoked Ms. Thomas's eight-year DOC suspended sentences on both charges. *Id.* On each count, the court then imposed two unsuspended DOC sentences totaling 7 years and 321 days (8 years

minus the original 44 days' credit for time served). *Id.* In addition, the court granted Ms. Thomas street time from April 7, 2016, through October 24, 2016 (201 days), and credit for 27 days of time served. *Id.*

In the prior Missoula County Criminal Possession of Dangerous Drugs matter, the court revoked and reimposed the two-year DOC sentence; however, this time, it was imposed unsuspended to run consecutively to the Yellowstone County case. Elec. Doc. 28.

Then, on June 17, 2019, the State of Montana, through the Yellowstone County Attorney's Office, charged Ms. Thomas with felony Escape. Elec. Doc. 14: Def. Ex. C. Four months later, on October 21, 2019, Ms. Thomas entered a guilty plea to the Escape charge. *Id.* At the sentencing hearing, the court imposed a three-year DOC sentence to run consecutively to all other sentences that Ms. Thomas was serving. *Id.* In addition, the court awarded her 131 days' credit for time served due to the amount of time she spent incarcerated pre-trial. *Id.*

On May 25, 2023, the State of Montana, through the Yellowstone County Attorney's Office, charged Ms. Deana Thomas with Criminal Possession with intent to distribute. Elec. Doc. 4. The basis for this charge was a phone call Ms. Thomas placed from the Yellowstone

County Detention Center. Elec. Doc. 2, 14, 21; COP & Sent. Tr. at 9.

She was at the detention center for a probation-related issue. *Id.* During that phone call on December 8, 2022, she instructed her mother to sell her (Ms. Thomas's) fentanyl pills. *Id.*

On February 23, 2024, her defense attorney filed an opposed motion to dismiss, arguing that due to the illegal sentence in Ms. Thomas's Yellowstone County Case DC-14-976, her subsequent detention was unlawful. Elec. Doc. 14. Further, since the State held her illegally in probationary custody, the jail calls she made to her mother on December 8, 2022, are inadmissible, and the case must be dismissed. *Id.*

Without a hearing, on October 25, 2024, the Yellowstone County District Court issued an order denying the motion. Appendix A: Order Denying Defendant's Motion to Dismiss. After receiving the court order, Ms. Thomas entered into a plea agreement with the State of Montana on December 6, 2024. Elec. Doc. 36. In the plea agreement, the parties specifically reserved Ms. Thomas's right to appeal the court's denial of the motion to dismiss. *Id.* In exchange for Ms. Thomas's guilty plea, the State would recommend a 5-year unsuspended DOC sentence to run concurrently with Ms. Thomas's other sentences. *Id.* However, at the

sentencing hearing on December 9, 2024, the State instead requested that the court impose a lower sentence of three years DOC unsuspended. COP & Sent. Tr. at pg. 11. The court ultimately followed this amended recommendation. *Id.* It sentenced Ms. Thomas to a three-year commitment to DOC, to run concurrently with her Carbon County and federal cases. Appendix B: Judgement. Ms. Thomas then initiated this appeal.

In addition to this appeal, Ms. Thomas also filed a “Petition for Writ of Habeas Corpus, alleging that the length of her sentence (Yellowstone County DC-14-976) was longer than the law allows.” *Thomas v. 422 Mont. 552*. This Court found that the 8-year DOC suspended sentences Ms. Thomas was originally sentenced to, as well as the 7-year 321-day DOC sentences she received after her revocation, did not comply with Montana law. *Id.* This Court remanded the matter back to the lower court to amend “its Order of Revocation and Imposition of Sentence to impose a sentence that comports with Montana law—a four-year and 321 days' commitment to the DOC along with the credits for time served and elapsed time.” *Id.*

IV. SUMMARY OF THE ARGUMENT

While the general rule is that statements or confessions by criminal defendants are typically admissible against the defendant, the exception is if those statements were obtained at the expense of the defendant's constitutional rights. *State v. Allies* (1979), 186 Mont. 99, 109, 606 P.2d 1043, 1048. In addition, any "fruit" of the poisonous tree, which is that constitutional right violation, is inadmissible against the defendant. *Id.*

The only reason that the State of Montana was able to overhear Ms. Thomas's conversation with her mother was that she was unlawfully detained under an illegal sentence in Yellowstone County District Court DC-14-976. The only reason the State was able to obtain the fentanyl pills was due to Ms. Thomas's unlawful detainment and illegal sentence. The only reason the State of Montana had sufficient evidence to charge Ms. Thomas with Criminal Possession of Dangerous Drugs with Intent to Deliver was because of this gross constitutional violation of illegally detaining her. By failing to grant the Defense's motion to dismiss the case against Ms. Thomas, the court erred.

V. STANDARD OF REVIEW

“[A] trial court's grant or denial of a motion to dismiss in a criminal case is a question of law that” this Court reviews “*novo.*” *State v. Giffin*, 2021 MT 190, ¶ 8, 405 Mont. 78, 491 P.3d 1288 (*citing State v. Violette*, 2009 MT 19, ¶ 10, 349 Mont. 81, 201 P.3d 804). Furthermore, the Court’s “standard of review is plenary,” and it determines “whether a district court's conclusion is correct.” *Violette*, at, ¶ 10 (quoting *State v. Howard*, 2008 MT 173, ¶ 8, 343 Mont. 378, 184 P.3d 344).

VI. ARGUMENT

A. Ms. Thomas expressly preserved her right to appeal the denied motion to suppress and dismiss.

By signing the plea agreement, which included a specific provision preserving Ms. Thomas’s right to appeal the district court denial of her motion to dismiss, she preserved her right to appeal that ruling.

Typically, at a change-of-plea hearing, “a defendant waives the right to appeal all nonjurisdictional defects upon voluntarily and knowingly entering a guilty plea, including claims of constitutional violations which may have occurred prior to the plea.” *State v. Pavey*, 2010 MT 104, ¶ 11, 356 Mont. 248, 231 P.3d 1104 (quoting *Violette*, at ¶ 16, 349).

However, Mont. Code. Ann. § 46-12-204 (3) lays out an exception to this general rule:

With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty or nolo contendere, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea. MCA § 46-12-204 (3).

Within the plea agreement that Ms. Thomas signed on December 6, 2024, the parties included a specific provision that stated, “The State further agrees to preserve for appellate review the denial of the defendant's Motion to Dismiss.” Elec. Doc. 36 at pg. 3. As negotiated and written into the plea agreement signed by the State’s attorney, defense counsel, and Ms. Thomas, she pled guilty while still retaining her right to appeal the district court’s denial of her motion to dismiss. It is expressly clear that Ms. Thomas entered into the plea agreement and subsequently changed her plea based on the retention of this right.

B. The district court erred by denying Ms. Thomas’s motion to dismiss because at the time she made the phone calls, she was illegally detained on an unlawful sentence.

As this Court has already ruled, the court imposed an illegal sentence when it resentenced her to a 7-year 321-day DOC sentence.

Thus, at the time she made the phone call in question to her mother, she was illegally detained at the Yellowstone County Detention Center. Absent the illegal sentence, she would have discharged that sentence and not made that phone call on a recorded line, which led to the possession of dangerous drugs with intent to distribute, a charge that is the crux of the current case.

Statements or “confessions are generally admissible against criminal defendants” except if they are obtained as a result of a constitutional violation. *Allies*, 186 Mont. 99, 109; see also *State v. Van Dort*, 2003 MT 104, ¶ 23, 315 Mont. 303, 68 P.3d 728 (when a confession is obtained following unlawful arrest, the confession is inadmissible). Furthermore, “[e]vidence gained as a result of a constitutional violation cannot be used to uncover other physical evidence.” *Allies*, 186 Mont. 99, 115 (citing *Orozco v. Texas* (1969), 394 U.S. 324, 89 S. Ct. 1095). Thus, “if the physical evidence is a fruit of the constitutional violation, it must be excluded.” *Allies*, 186 Mont. 99. When a defendant presents a motion to suppress (and dismiss) “to a trial court, its analysis of the evidence presented at the pretrial hearing must focus on whether impermissible

procedures were followed by law enforcement authorities.” *State v. Smith* (1974), 164 Mont. 334, 338, 523 P.2d 1395, 1397.

The district court violated Ms. Thomas's constitutional rights at both her original sentencing and her revocation hearing. At the original sentencing, the court sentenced Ms. Thomas on both felony counts to 8 years DOC, with all that time suspended, and awarded her credit for 44 days of time served. It is undisputed that this was an illegal sentence, as this Court has already made that determination in Ms. Thomas’s habeas corpus petition. *Thomas*, 422 Mont. 552.

At the ensuing revocation hearing, the district court again illegally sentenced Ms. Thomas to 7 years, 321 days, with credit for time served and street-time credit. *Id*; see also *State v. Seals*, 2007 MT 71, 336 Mont. 416, 156 P.3d 15 (when revoking an illegal sentence, the court must impose a lesser sentence under MCA § 46-18-203). As this Court stated in its order remanding Ms. Thomas’s original 2014 Yellowstone County case sentence back to the district court, the maximum sentence the court could have imposed is 4 years and 321 days with applicable credit. *Thomas*, 422 Mont. 552.

Starting on December 12, 2017, the date of revocation and applying the maximum legal sentence of 4 years, 321 days, gives a discharge date of October 29, 2022. Factoring in the street time of 201 days and credit for time served of 27 days makes the final discharge date March 15, 2017. Now, Ms. Thomas was at the Yellowstone County Detention Center on December 8, 2022, for a probation issue related to this matter, almost 9 months after she would have completed her sentence had she been lawfully resentenced.

Clearly, Ms. Thomas's rights were constitutionally violated when the court imposed a legal sentence originally and then again at her revocation hearing. Furthermore, because of this violation, she was illegally detained on a probation issue stemming from that sentence. That sentence should have been discharged over 8 months earlier. Due to the detainment, the State was able to collect the statements Ms. Thomas made from the detention center. These calls led them to find the fentanyl pills she mentioned to her mother. Both the call and the ensuing pills are fruits of Ms. Thomas's illegal sentence and subsequent detainment. The district court erred by denying Ms. Thomas' motion to dismiss.

C. CONCLUSION

The district court erred by denying Ms. Thomas's motion to dismiss the case against her. Due to the unlawful detention stemming from the illegal sentence imposed by the court in an earlier case. As a result, Ms. Thomas respectfully requests that the denial of the motion to dismiss be reversed and, pursuant to MCA § 46-12-204 (3), Ms. Thomas's guilty plea be withdrawn.

Respectfully submitted this 19th day of February 2026

/s/ Kelli A. Cummings

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D. CERTIFICATE OF COMPLIANCE

Under the Montana Rules of Appellate Procedure, I certify that the Appellant's Opening Brief is printed with a proportionately spaced Century Schoolbook typeface of 14 points, is double-spaced except for footnotes and lengthy quotes, and does not exceed 10,000 words. The exact word count, as calculated by Microsoft Word, is 2,671, excluding tables and certificates.

Dated this 19th day of February 2026

/s/Kelli A. Cummings

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CERTIFICATE OF SERVICE

I, Kelli Cummings, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 02-19-2026:

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