

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0131

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STATE OF MONTANA,

Plaintiff and Appellant,

v.

ANDREW EMMINGS,

Defendant and Appellee.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana Fourth Judicial District Court,  
Missoula County, the Honorable John W. Larson, Presiding

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## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE .....	2
STATEMENT OF THE FACTS .....	4
STANDARD OF REVIEW.....	14
SUMMARY OF THE ARGUMENT.....	14
ARGUMENT .....	16
I.    The state is wrong that the law of the case doctrine prohibited the district court from dismissing the petition to revoke Mr. Emmings’ suspended sentence.....	16
II.   The state has not met its burden to show the district court improperly dismissed the case.....	19
III.  The district court correctly dismissed the petition to revoke because Mr. Emmings’ probations conditions were impossible for him to follow and for the DOC to enforce. ....	28
A.   It was impossible for Mr. Emmings to comply with the probation conditions.....	28
B.   The probation conditions were also impossible for the Montana Department of Corrections to enforce. ....	32
CONCLUSION.....	33
CERTIFICATE OF COMPLIANCE .....	34

## TABLE OF AUTHORITIES

### Cases

<i>Carlson v. N. Pac. Ry. Co.</i> , 86 Mont. 78, 281 P. 913 (1929) .....	17
<i>Messinger v. Anderson</i> , 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152 (1912) .....	18
<i>S. Ry. Co. v. Clift</i> , 260 U.S. 316, 43 S.Ct. 126, 67 L.Ed. 283 (1922) .....	18
<i>State v. Bailey</i> , 2004 MT 87, 320 Mont. 501, 87 P.3d 1032 .....	19
<i>State v. Betterman</i> , 2015 MT 39, 378 Mont. 182, 342 P.3d 971 .....	14
<i>State v. Black</i> , 245 Mont. 39, 798 P.2d 530 (1990).....	17
<i>State v. Cook</i> , 2012 MT 34, 364 Mont. 161, 272 P.3d 50 .....	28
<i>State v. Crisp</i> , 249 Mont. 199, 814 P.2d 981 (1991).....	23
<i>State v. Gilder</i> , 2001 MT 121, 305 Mont. 362, 28 P.3d 488 .....	17, 18
<i>State v. Keefe</i> , 2022 MT 121, 409 Mont. 86, 512 P.3d 741 .....	18
<i>State v. Little Coyote</i> , 2023 MT 243, 414 Mont. 299, 539 P.3d 1142 .....	21
<i>State v. Ohl</i> , 2022 MT 241, 411 Mont. 52, 521 P.3d 759 .....	22

*State v. Villalobos*,  
2024 MT 301, 419 Mont. 256, 560 P.3d 617 ..... 28

*State v. Woods*,  
285 Mont. 46, 945 P.2d 918 (1997)..... 17

*State v. Wooster*,  
2001 MT 4, 304 Mont. 56, 16 P.3d 409 ..... 17

**Statutes**

Mont. Code Ann. § 45-5-626(3) ..... 2  
Mont. Code Ann. § 46-23-101 ..... 32  
Mont. Code Ann. § 46-23-1004(1) ..... 32  
Mont. Code Ann. § 46-23-1020 ..... 9, 23, 24  
Mont. Code Ann. § 46-23-1020(1)(b) ..... 10, 15, 22  
Mont. Code Ann. § 46-23-1020(2) ..... 24  
Mont. Code Ann. § 46-23-1115 ..... 32

**Other Authorities**

*Discharge*. Merriam-Webster Dictionary Online, <https://www.merriam-webster.com/dictionary/discharge> (last visited Jul. 16, 2025) ..... 23

*Conditional*. Merriam-Webster Dictionary Online, <https://www.merriam-webster.com/dictionary/conditional> (last visited Jul. 16, 2025) ..... 27

## STATEMENT OF THE ISSUES

Issue One: Did the “law of the case” doctrine prohibit the district court from dismissing the petition to revoke Mr. Emmings’ suspended sentence based in part on its determination that its prior order reimposing Mr. Emmings’ discharged sentence was illegal?

Issue Two: When a person who has been conditionally discharged from supervision becomes a resident of another state, the Legislature requires that the conditional discharge be construed as a “discharge of the imposed sentence.” Here, Mr. Emmings was conditionally discharged from supervision and then became a resident of California. Was the district court correct when it concluded that Mr. Emmings’ sentence was over when he became a resident of another state, such that neither his conditional discharge nor his suspended sentence could be revoked?

Issue Three: A person cannot be ordered to comply with impossible probation conditions. Here, the district court ordered Mr. Emmings to be supervised by Montana Department of Corrections but allowed him to remain in California. The State then revoked him for not complying with probation supervision. Did the district court properly

dismiss the petition to revoke in light of the previously ordered impossible probation conditions?

### **STATEMENT OF THE CASE**

Mr. Emmings was charged with twenty-one counts of violation of an order of protection, in violation of Mont. Code Ann. § 45-5-626(3), on December 11, 2017. (Information (District Court Document (Doc.) 3)). He pleaded guilty to eight counts on May 1, 2019, and the remaining counts were dismissed pursuant to the plea agreement. (May 1, 2019 Minute Entry (Doc. 56); Plea Agreement (Doc. 57)). He was sentenced to the Montana Department of Corrections for a total of twelve years with ten years suspended. (Amended Judgment (Doc. 82)).

Mr. Emmings was released from incarceration on July 1, 2021, and placed on probation. (Petitioner's Second Petition for Conditional Discharge (Doc. 91) at 7). On August 23, 2022, the district court granted Mr. Emmings' motion for conditional discharge so that Mr. Emmings could move to California. (Order Conditionally Discharging Probation Supervision (Doc. 92); Motion for Order (Doc. 104) at 2). The district court placed no explicit conditions on Mr. Emmings' conditional discharge. (*See* Doc. 92).

On January 30, 2023, the State filed a motion to revoke Mr. Emmings' conditional discharge. (Motion to Revoke Conditional Discharge (Doc. 93)). After briefing and a hearing, the district court ultimately concluded that Mr. Emmings had violated conditions of his original judgment and revoked his conditional release, placing him back on active supervision. (State's Response to Motion to Dismiss (Doc. 143), Exhibit 6).<sup>1</sup>

On December 18, 2023, the State filed a petition to revoke Mr. Emmings' suspended sentence. (1st Petition to Revoke (Doc. 129)). Mr. Emmings filed a motion to dismiss the petition. (Motion to Dismiss (Doc. 140)). The district court agreed with Mr. Emmings' arguments, dismissed the petition to revoke, and struck the prior order revoking Mr. Emmings' conditional discharge based on the finding that his sentence concluded when he was conditionally discharged and became a resident of California. (Order Granting Defendant's Motion to Dismiss (Doc. 147)). The State timely appealed. (Notice of Appeal (Doc. 149)).

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<sup>1</sup> This order was filed as Doc. 126 in the district court record, and the State cites this order as Doc. 126 throughout its brief. Doc. 126 was stricken from the record as part of the order the State is appealing. (*See* Order Granting Defendant's Motion to Dismiss (Doc. 147)). However, this order still appears in the district court record as Exhibit 6 of Doc. 143.

## STATEMENT OF THE FACTS

As part of Mr. Emmings' original suspended sentence, he was ordered to follow twenty-eight conditions of probation, including that he refrain from using social media except for business purposes and conduct himself as a good citizen. (Doc. 82).

After Mr. Emmings began serving his suspended sentence in July 2021, he filed two motions for conditional discharge from active supervision, the first of which was denied and the second granted. (Petition for Conditional Discharge (Doc. 88); Order Denying Petition for Conditional Discharge from Probation Supervision (Doc. 90); Doc. 91; Doc. 92). Mr. Emmings wished to return to California, where he had spent most of his adult life. (Doc. 91 at 4). The district court conditionally discharged Mr. Emmings from probation supervision. (Doc. 92). The district court did not give Mr. Emmings any specific conditions to follow in the order, stating only that the district court "may reimpose the supervision requirement if necessary and appropriate." (Doc. 92 at 4). The district court also did not tell Mr. Emmings that he needed to abide by the conditions in his original sentence. (*See* Doc. 92).

On January 30, 2023, the State filed a motion to revoke Mr. Emmings' conditional discharge. (Doc. 93). The State alleged that Mr. Emmings was "explicitly threatening violence against one or more other individuals" and "not conducting himself as a good citizen." (Doc. 93 at 1). The State attached an email that Mr. Emmings had allegedly sent to his parents, in which he had threatened to kill journalist Dillon Kato. (Doc. 93). His parents forwarded the email to law enforcement, and it was eventually shared with the county attorney. (Doc. 93). Mr. Emmings did not send the email to Mr. Kato himself, and Mr. Kato only saw the email when the State showed it to him. (August 25, 2023, Transcript of Proceedings (Evidentiary Tr.) at 53).

The district court granted the State's motion to revoke Mr. Emmings' conditional discharge the day after it was filed. (Order (Doc. 95)). Mr. Emmings then filed a motion asking for the district court to allow briefing and a hearing on the issue. (Motion for Order Setting Status Hearing (Doc. 99)). The district court granted Mr. Emmings' motion and stayed the order revoking his conditional discharge. (February 15, 2023, Transcript of Proceedings (Status Tr.) at 10).

Mr. Emmings filed a motion to quash the revocation of his

conditional discharge. (Motion for Order (Doc. 104)). Mr. Emmings argued that the district court did not impose any conditions on Mr. Emmings' conditional discharge, and so his conditional discharge could not be revoked. (Doc. 104). In other words, there were no conditions in place that Mr. Emmings could violate. (Doc. 104). The district court disagreed, holding, "If [Mr.] Emmings violated any condition of his original sentence, the Court would have authority to revoke the conditional discharge of probation supervision that it had previously granted." (Order on Reimposition of Probation Supervision (Doc. 122) at 2). The district court held that "the conditions in his sentence that are exclusive to active supervision (and thus would be waived in the absence of supervision) are sufficiently distinguishable from the other conditions that would apply whether or not a probation officer is actively supervising him." (Doc. 122 at 12). At the time Mr. Emmings was conditionally discharged from supervision, however, the district court did not tell Mr. Emmings that he was still subject to the conditions in his judgment nor did it explain to him which conditions were exclusive to active supervision, and which were not. (See Doc. 92).

The district court then held an evidentiary hearing to determine

whether Mr. Emmings had in fact violated any non-supervision-related conditions of his judgment during his conditional discharge.

(Evidentiary Tr. at 1-98). The district court heard testimony and argument and ultimately reimposed supervision. (Evidentiary Tr. at 1-98; Doc. 143, Exhibit 6) The State had filed its petition to revoke Mr. Emmings' conditional discharge on the basis that he violated the condition that he conduct himself as a good citizen. (Doc. 93). The district court did not find that Mr. Emmings had violated this condition; instead, the district court found Mr. Emmings had violated the condition preventing him from posting on social media except for business purposes, which the State had not alleged in its petition to revoke Mr. Emmings' conditional discharge. (Doc. 143, Exhibit 6; *see* Doc. 93).

The district court reimposed supervision and ordered,

The terms of Emmings' probation shall be precisely as ordered in the Court's Amended Judgment against Emmings issued on September 18, 2019, except the Court shall permit Emmings to reside in California, where he has relocated, even if he is not approved for supervision pursuant to the provisions of the Interstate Compact for Adult Offender Supervision. If the State of California agrees to assist with supervision pursuant to the Interstate Compact, Emmings shall cooperate with the designated supervision conditions. The Department of Corrections shall be given discretion to

establish the frequency of reporting and frequency of submission of written reports. Emmings shall contact the Montana Department of Corrections through the Missoula Office of Probation and Parole no later than August 31, 2023 at 5:00 o'clock p.m. MST to reestablish supervision on probation pursuant to the Amended Judgment.

(Doc. 143, Exhibit 6 (emphasis omitted)). The district court continued, “The Court instructs the State to work with Montana Probation and Parole to figure out the most appropriate way to supervise Emmings while he resides and remains in California. The Court will not entertain a solution that requires him to relocate to Montana.” (Doc. 143, Exhibit 6).

In December 2023, the State filed a petition to revoke Mr. Emmings’ suspended sentence. (Doc. 129). The basis for the petition was that Mr. Emmings had a compliance violation and was absconding. (Doc. 129). Mr. Emmings’ probation officer had contacted him regarding probation, both via email and phone. (Doc. 129). Mr. Emmings had responded to the email and had answered the phone call and spoken with his probation officer. (Doc. 129). The compliance violation alleged was that Mr. Emmings’ “cooperation [with probation] has been minimal at best.” (Doc. 129 at 6). The absconding allegation was based on the probation officer’s report that “Defendant has not reported a residence

or a specific location of where he sleeps. Defendant has not provided proof of income or employment. Due to Defendant's absolute lack of participation *and out of state residence*, supervision is not possible and this officer believes the Defendant qualifies as an absconder.” (Doc. 129 at 6 (emphasis added)). Nowhere did the petition to revoke acknowledge that the district court had given Mr. Emmings explicit permission to remain in California. (*See* Doc. 129).

Judge Halligan had presided over the entire case up to this point. After the petition to revoke Mr. Emmings’ suspended sentence was filed, Judge Halligan recused herself and Judge Larson assumed jurisdiction of the case. (Invitation to Assume Jurisdiction (Doc. 130)).

Mr. Emmings filed a motion to dismiss the petition to revoke. (Doc. 140). The motion argued that Mr. Emmings’ sentence had ended when he became a resident of California, because Mont. Code Ann. § 46-23-1020 provides that if a person who has been conditionally discharged from active supervision becomes a resident of another state, “the conditional discharge must be construed as a discharge of the imposed sentence...” (Doc. 140). Because his sentence had ended, Mr. Emmings had no sentence left to be revoked. (Doc. 140). Mr. Emmings

also argued that the probation conditions ordered by the district court when supervision was reinstated were illegal, contradictory, and impossible. (Doc. 140). The motion to dismiss noted that Mr. Emmings' probation officer believed supervision was not possible, in part because he lived out of state. (Doc. 129; Doc. 140). Finally, the motion to dismiss argued that the district court had effectively banished Mr. Emmings from Montana to California. (Doc. 140).

The State responded. (State's Response to Motion to Dismiss (Doc. 145)). The State argued that the doctrine of the law of the case prevented Mr. Emmings from challenging the order revoking his conditional discharge and placing him back on probation. (Doc. 145 at 2-3). The State said Mr. Emmings' sentence was not terminated, because § 46-23-1020(1)(b) provides that people who have been conditionally discharged and move out of state are still "subject to revocation as provided in subsection (2)" of that statute. (Doc. 145 at 3). Finally, the State argued that Mr. Emmings was clearly placed back on probation and that "[h]is supervision was possible through Interstate Compact, through telephone, email, and video calls, and through providing documentation if necessary." (Doc. 145 at 3-4). According to his

probation officer, Mr. Emmings was not eligible for Interstate Compact in California. (Doc. 91 at 7).

Mr. Emmings' reply noted that the law of the case was not relevant to this issue, because Mr. Emmings was now challenging "whether that probation could be enforced." (Reply to Motion to Dismiss (Doc. 146) at 1). Mr. Emmings pointed out, "the interstate compact process was not possible to be followed without him returning to Montana to begin that process, nor was that paperwork sent to Mr. Emmings." (Doc. 146 at 2). The State made "no counter argument to the impossibility of Mr. Emmings' ability to comply with the probation conditions other than making a blanket statement that it could be possible." (Doc. 146 at 2).

The district court ultimately granted Mr. Emmings' motion, dismissing the petition to revoke and finding Mr. Emmings' sentence was complete. (Doc. 147). Finding that Mr. Emmings' sentence had ended, the district court reasoned,

Under the statute his sentence must be construed as a discharge of the imposed sentence. Once Mr. Emmings left the State of Montana there was no time remaining on his sentence and it would not be subject to revocation as subsection 2 only applies to the time remaining on his sentence. Since he became a resident of California his

sentence would then be discharged and not subject to revocation. The State has not convinced this Court otherwise.

(Doc. 147 at 3). The district court also found that the new probation conditions imposed on Mr. Emmings after his conditional discharge was revoked “were unquestionably illegal, contradictory, and made it impossible for Mr. Emmings to be able to stay in compliance with probation.” (Doc. 147 at 3). “He was tasked with somehow being in compliance with every provision of his conditions except the most important one – being in the District.” (Doc. 147 at 4). Additionally, the district court reasoned, “Probation was also put in the impossible task of supervising an individual they had no ability to actually supervise.”

(Doc. 147 at 4). The district court continued,

There was no process for him to provide his monthly reports, no way to check to see if he was in possession of firearms, illicit drugs, or consuming alcohol, no ability to check if he has had recent police contact, no way to monitor his social media activity, no way to confirm that he is following his curfew, no way for them to know with whom he is associating, no way to sanction him in any meaningful way but they were required to enforce all of these conditions. Mr. Emmings had no means to remedy these issues; he could not have computer monitoring software applied to his belongings without returning to Montana, and he could not be searched or have his housing approved without returning to Montana. His entire purpose for being on probation was impossible with what the Court did in this order reimposing his

conditions of probation.

...

[Mr. Emmings' probation officer] did not send specially tailored conditions that would deal with the situation nor did he provide Mr. Emmings with the proper instructions to deal with this incredibly unique situation; he just sent him paperwork that if signed would immediately lead to Mr. Emmings' revocation.<sup>2</sup> The next allegation is that because he hasn't signed the improper paperwork he is absconding and not cooperating with the process. The only way probation was going to be able to supervise Mr. Emmings was through phone and email. He clearly had both working and they were able to contact him directly at both.

(Doc. 147 at 5-6). The district court concluded, "Almost every condition of Mr. Emmings' sentence that was reimposed, including absconding, are impossible for him to complete because of the way he was ordered back on probation." (Doc. 147 at 6). The district court agreed with Mr. Emmings that his probation conditions were impossible in part because he was essentially banished to California. (Doc. 147 at 3). The district court struck the order reimposing active supervision from the record, dismissed the petition to revoke, and effectively closed the case by finding Mr. Emmings' sentence had ended. (Doc. 147). The State now appeals this decision. (Doc. 149).

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<sup>2</sup> The district court is presumably referring to the probation sign-up paperwork that the probation office sent to Mr. Emmings. (See Doc. 129 at 6).

## **STANDARD OF REVIEW**

This Court reviews the grant or denial of a motion to dismiss *de novo*. *State v. Betterman*, 2015 MT 39, ¶ 11, 378 Mont. 182, 342 P.3d 971, *aff'd*, 578 U.S. 437, 136 S. Ct. 1609, 194 L. Ed. 2d 723 (2016). This Court also reviews a district court's interpretation of a statute *de novo*. *Betterman*, ¶ 11.

## **SUMMARY OF THE ARGUMENT**

In criminal matters, the law of the case doctrine states that a decision by the Montana Supreme Court directs decision on any further proceedings in that case and prevents the same issues from being relitigated. The law of the case doctrine is analyzed through an abuse of discretion standard. The State cites no authority to support that a district court is prohibited from changing its mind or compelled to enforce its own prior illegal ruling. Here, the district court dismissed the petition to revoke and found that Mr. Emmings' case was closed. It held that the probation conditions it had previously ordered were impossible, and therefore illegal, and that supervision should have never been reimposed because Mr. Emmings' sentence had ended. The authority cited by the State regarding law of the case in criminal

matters does not support its argument that the district court was barred from reconsidering its own prior rulings in the case and correcting its past illegal rulings.

When a person who has been conditionally discharged from active supervision becomes a resident of another state, “the conditional discharge must be construed as a discharge of the imposed sentence subject to revocation as provided in subsection (2).” § 46-23-1020(1)(b). The district court construed this phrase to mean that the person’s sentence ends when they become a resident of another state. The State argues that “discharge” cannot mean the sentence is over but provides no interpretation of what “discharge of the imposed sentence” does mean. This phrase could only mean that the sentence is ended. Once the sentence is over, a person cannot be revoked. Here, Mr. Emmings was conditionally discharged from active supervision and became a resident of California. The district court held that, because his sentence was over, his conditional discharge should not have been revoked and his suspended sentence could no longer be revoked. The State has not met its burden on appeal to show that the district court was incorrect in

its interpretation of the law. The district court's order should be affirmed.

This Court has held that probation conditions that are impossible for a person to follow are illegal and must be struck from the judgment. Here, Mr. Emmings was ordered to comply with all conditions in his original sentence, including probation supervision, but he was explicitly allowed to remain in California. These probation conditions were impossible, as a person cannot be on active Montana DOC supervision while living in another state. The State then filed a petition to revoke Mr. Emmings' sentence for his failure to comply with these impossible, and therefore illegal, conditions. The district court properly dismissed the petition to revoke Mr. Emmings' sentence.

### **ARGUMENT**

**I. The State is wrong that the law of the case doctrine prohibited the district court from dismissing the petition to revoke Mr. Emmings' suspended sentence.**

The State argues that the district court "failed to apply the law of the case doctrine" when it reconsidered its prior order reimposing supervision. Appellant Br. at 23. The State points out that this Court has adopted the law of the case doctrine in criminal matters, citing four

criminal cases. Appellant Br. at 22 (citing *State v. Gilder*, 2001 MT 121, 305 Mont. 362, 28 P.3d 488; *State v. Wooster*, 2001 MT 4, 304 Mont. 56, 16 P.3d 409; *State v. Woods*, 285 Mont. 46, 945 P.2d 918 (1997); *State v. Black*, 245 Mont. 39, 798 P.2d 530 (1990)). The State misses that in each of these cases, this Court held that a prior decision of *the Montana Supreme Court* resolving a particular issue between the parties is binding on the case and cannot be relitigated. See *Gilder*, ¶ 9; *Wooster*, ¶ 12; *Woods*, 52; *Black*, 44. This Court has said that the law of the case doctrine “is well established and long adhered to in this state that where, upon an appeal, *the supreme court in deciding a case presented states in its opinion a principle or rule of law necessary to the decision*, such pronouncement becomes the law of the case, and must be adhered to throughout its subsequent progress...” *Gilder*, ¶ 12 (quoting *Carlson v. N. Pac. Ry. Co.*, 86 Mont. 78, 81, 281 P. 913, 914 (1929)) (emphasis added). The cases cited by the State do not suggest that a district court cannot change its mind or overrule its own prior decision in a case. The cases suggest only that when this Court—the Montana Supreme Court—makes a ruling on an appeal of a case, and that case is remanded for further proceedings, this Court’s ruling is the law of that

case and the issue on appeal cannot be relitigated on remand. See *Gilder*, ¶ 9; *Wooster*, ¶ 12; *Woods*, 52; *Black*, 44.

This Court also stated that, although the law of the case is normally decisive, it does not necessarily have a binding force. *Gilder*, ¶ 10. The law of the case “directs discretion,” but does not supersede discretion or compel judgment. *Gilder*, ¶ 10 (citing *S. Ry. Co. v. Clift*, 260 U.S. 316, 319, 43 S.Ct. 126, 67 L.Ed. 283 (1922)). The Court in *Gilder* pointed out that the law of the case “merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power.” *Gilder*, ¶ 11 (quoting *Messinger v. Anderson*, 225 U.S. 436, 444, 32 S.Ct. 739, 56 L.Ed. 1152 (1912)). Therefore, the correct standard would be whether the district court *abused its discretion* by failing to apply the law of the case doctrine. *Gilder*, ¶ 13; *see also*, *State v. Keefe*, 2022 MT 121, ¶ 13, 409 Mont. 86, 512 P.3d 741 (“A district court's application of the law of the case doctrine is reviewed for an abuse of discretion.”).

The law of the case “precludes subsequent evidentiary hearings *on issues finally adjudicated before this Court*.” *Gilder*, ¶ 16 (emphasis added). The law of the case doctrine does not prevent a district court

from changing its mind or correcting a previous action that it later realizes was illegal. The State's suggestion that a district court should be required to enforce probation conditions that it previously imposed and later realized were illegal is incorrect. The district court acted within its legal authority when it dismissed the State's revocation petition and struck the prior order reimposing Mr. Emmings' probation supervision, on which the revocation petition was based.<sup>3</sup>

**II. The State has not met its burden to show the district court improperly dismissed the case.**

On appeal, the Appellant has the burden to establish error by a district court. *State v. Bailey*, 2004 MT 87, ¶ 26, 320 Mont. 501, 87 P.3d 1032.

Mr. Emmings' trial counsel filed a motion to dismiss the State's petition to revoke, arguing in part that "the conditional discharge should never have been revoked." (Doc. 140). Trial counsel cited § 46-23-1020, which states in relevant part,

If an individual who has been granted a conditional discharge under 46-23-1011 or 46-23-1021 becomes a

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<sup>3</sup> Even if this Court finds that the district court could not lawfully reconsider the previous reimposition of supervision, the district court still properly dismissed the present petition to revoke based on the impossibility of Mr. Emmings' probation conditions. See Argument section III, *infra*.

resident of another state, the conditional discharge must be construed as a discharge of the imposed sentence subject to revocation as provided in subsection (2).

(2) A conditional discharge may be revoked if, within the time remaining on the sentence that was conditionally discharged, the individual: ... (c) violates any condition imposed by the district court or the board.

§ 46-23-1020. Mr. Emmings was conditionally discharged on August 23, 2022. (Doc. 92). He then moved to California and became a resident there. (Doc. 104). Trial counsel argued that,

Under the statute his sentence must be construed as a discharge of the imposed sentence. Once Mr. Emmings left the State of Montana there was no time remaining on his sentence and it would not be subject to revocation as subsection 2 only applies to the time remaining on his sentence. Since he became a resident of California his sentence would then be discharged and not subject to revocation.

(Doc. 140 at 2). In other words, trial counsel argued that, pursuant to § 46-23-1020, Mr. Emmings' sentence ended when he became a resident of California, so he could no longer be revoked after that. (Doc. 140).

The district court agreed. The court granted Mr. Emmings' motion to dismiss and struck the August 25, 2023, order reimposing his sentence. (Doc. 147). The district court reasoned that when Mr. Emmings became a resident of California, his sentence was discharged

and he could no longer be revoked. (Doc. 147). The court stated that, because there was no time remaining on Mr. Emmings' sentence, "it would not be subject to revocation as subsection 2 [of § 46-23-1020] only applies to the time remaining on his sentence." (Doc. 147 at 3) "Since he became a resident of California his sentence would then be discharged and not subject to revocation." (Doc. 147 at 3). The district court said, "The State has not convinced this Court otherwise." (Doc. 147 at 3).

There is nothing in Montana law that allows a court to retain jurisdiction over a person whose sentence has been discharged. A sentence cannot both be discharged and subject to revocation. Once a person's sentence has ended, they cannot be revoked for violating a condition of the prior sentence. *See, e.g., State v. Little Coyote*, 2023 MT 243, ¶ 10, 414 Mont. 299, 539 P.3d 1142 (holding that the defendant's suspended sentence could not be revoked because credit for time served was improperly calculated when he was sentenced and his sentence should have already terminated, even though the defendant agreed with the calculation at sentencing and did not appeal the sentencing order). It is not clear what the "discharge" of a sentence means in § 46-23-1020, other than the complete termination of the sentence.

The State argues that the district court “misapplied a fundamental canon of statutory interpretation by omitting language contained in statute central to its determination of plain meaning” and rendered “a portion of Mont. Code Ann. § 46-23-1020(1)(b) meaningless.” Appellant Br. at 27, 35. The State is doing the same. The State gives full weight to the latter portion of the sentence at issue, “subject to revocation as provided in subsection (2),” but ignores the majority of the sentence, “If an individual who has been granted a conditional discharge under 46-23-1011 or 46-23-1021 becomes a resident of another state, the conditional discharge must be construed as a discharge of the imposed sentence.” § 46-23-1020(1)(b). The State provides no alternative meaning for “discharge of the imposed sentence.”

Section 46-23-1020(1)(b) has no meaning if it does not terminate a person’s sentence. This Court assumes that the Legislature does not pass meaningless legislation and will construe a statute to “avoid any statutory interpretation that renders any sections of the statute superfluous and does not give effect to all of the words used.” *State v. Ohl*, 2022 MT 241, ¶ 11, 411 Mont. 52, 521 P.3d 759 (internal citations

and quotations omitted). The State claims that the district court's interpretation of the statute would render a portion of the statute meaningless. Appellant Br. at 35. However, the State ignores that its own interpretation of the statute would in fact render a different portion of the statute meaningless. Some meaning must be given to the phrase "discharge the sentence."

This Court will give words their ordinary meaning when interpreting a statute. *See, e.g., State v. Crisp*, 249 Mont. 199, 204, 814 P.2d 981 (1991). "Discharge" means, "to relieve of a charge, load, or burden," "to release from an obligation," "to set aside or dismiss," "the act of relieving of something that oppresses," or "the act of removing an obligation or liability." *Discharge*, Merriam-Webster Dictionary Online, <https://www.merriam-webster.com/dictionary/discharge> (last visited July 16, 2025). The statute says that the conditional discharge "must be construed as a discharge of *the imposed sentence*" when a person becomes a resident of another state. § 46-23-1020 (emphasis added). To discharge a person's suspended sentence then must mean to release them from the burdens of that sentence. If a person has been released from their suspended sentence, they cannot be revoked. The district

court was correct when it concluded that Mr. Emmings' sentence ended and he could not be revoked. The State has not met its burden on appeal to prove otherwise.

Alternatively, Mr. Emmings' conditional release was illegally revoked by the district court because the court imposed no conditions on his conditional release that could have triggered revocation. Section 46-23-1020(2) provides in relevant part, "A conditional discharge may be revoked if, within the time remaining on the sentence that was conditionally discharged, the individual... violates any condition imposed by the district court or the board." The statute does not specify whether conditions must be set by the district court at the time the conditional release is granted or whether the conditions are the conditions previously set by the court in the judgment. *See* § 46-23-1020. Mr. Emmings argued at the time of the revocation of his conditional discharge that he could not be revoked because the court had placed no conditions on his "conditional" discharge. (Doc. 104).

When the district court conditionally discharged Mr. Emmings from active supervision, it did not, in fact, set any conditions. (*See* Doc. 92). The district court said only, "...this discharge is only conditional.

The Court may reimpose the supervision requirement if necessary and appropriate.” (Doc. 92 at 4). The district court did not tell Mr. Emmings he still needed to abide by all of the conditions of his original sentence. (See Doc. 92). Mr. Emmings moved to California, which was the purpose of seeking the conditional discharge. (Doc. 91). Obviously, some of the conditions of his original sentence were impossible to follow when he lived out of state, but the district court did not tell him he needed to continue following any specific conditions. (See Doc. 92).

The defendant must be notified what the conditions of his conditional discharge are. “If necessary and appropriate” was too vague to expect Mr. Emmings to understand when reimposition of supervision could occur. The district court needed to order Mr. Emmings to follow specific conditions of his conditional release. It did not. Therefore, the district court had no way of legally revoking Mr. Emmings’ conditional release and putting him back on active supervision.

However, the district court found that it could revoke Mr. Emmings’ conditional discharge because he violated a condition of his original sentence. (Doc. 122). The district court said that the conditions of the original judgment that applied only to active supervision were

“sufficiently distinguishable” from those which were not related to active supervision. (Doc. 122 at 12). So, the district court concluded, Mr. Emmings should not have been confused about which conditions still applied during his conditional discharge from active supervision and which did not. (Doc. 122 at 12).

The active supervision conditions were not “sufficiently distinguishable” from the other conditions, as the district court claimed. There were twenty-eight conditions of the original sentence. (Doc. 82). The district court did not specify which of these conditions actually applied during conditional discharge, only held after the fact that “If [Mr.] Emmings violated *any* condition of his original sentence, the Court would have authority to revoke the conditional discharge of probation supervision that it had previously granted – that is, to reimpose probation supervision.” (Doc. 122 at 2 (emphasis added); see Doc. 92). The court did not tell Mr. Emmings at the time of his conditional discharge that he had to comply specifically with the conditions of his original sentence. (*See* Doc. 92).

The district court had to order specific conditions that Mr. Emmings was required to follow during his conditional discharge. The

discharge was conditional, meaning it was “subject to, implying, or dependent upon a condition.” *Conditional*, Merriam-Webster Dictionary Online, <https://www.merriam-webster.com/dictionary/conditional> (last visited July 16, 2025). The discharge had to be conditioned *on something*. It was not. As a result, the district court’s order revoking Mr. Emmings’ conditional discharge was illegal. Because Mr. Emmings was illegally placed back on active supervision, revocation of his suspended sentence for a violation of a condition of his active supervision was illegal. So, the district court properly dismissed the State’s petition to revoke Mr. Emmings’ suspended sentence on the basis that he violated conditions of his illegally imposed active supervision. Although the district court did not include this rationale for dismissal in its final order, this Court may affirm the district court when it reached the correct result but for the wrong reason. *Betterman*, ¶ 11.

**III. The district court correctly dismissed the petition to revoke because Mr. Emmings' probations conditions were impossible for him to follow and for the DOC to enforce.**

**A. It was impossible for Mr. Emmings to comply with the probation conditions.**

This Court has held that a condition of a suspended sentence that is impossible for the defendant to complete is illegal and must be struck from the judgment. *State v. Cook*, 2012 MT 34, ¶ 36, 364 Mont. 161, 272 P.3d 50. This Court held in *Cook* that a defendant could not be ordered to GPS monitoring that was unavailable in Montana. *Cook*, ¶ 36. This Court has also said that a defendant cannot be ordered to complete treatment court if the defendant does not qualify for treatment court, as the condition would be impossible and therefore illegal. *State v. Villalobos*, 2024 MT 301, ¶ 14, 419 Mont. 256, 560 P.3d 617.

Here, it was impossible for Mr. Emmings to comply with the probation conditions ordered by the district court when it reimposed Mr. Emmings' probation on August 25, 2023. (Doc. 143, Exhibit 6). The order stated, "The terms of Emmings' probation shall be *precisely as ordered* in the Court's Amended Judgment against Emmings issued on September 18, 2019, except the Court shall permit Emmings to reside

in California, where he has relocated, even if he is not approved for supervision pursuant to the provisions of the Interstate Compact for Adult Offender Supervision.” (Doc. 143, Exhibit 6 (emphasis added)). The order stated further, “The Court instructs the State to work with Montana Probation and Parole to figure out the most appropriate way to supervise Emmings while he resides and remains in California.” (Doc. 143, Exhibit 6). The order did not require Mr. Emmings to apply for the Interstate Compact. (See Doc. 143, Exhibit 6).

The Amended Judgement had twenty-eight conditions of probation. (Doc. 82). This included the requirement that, “The Defendant must obtain permission from his Probation Officer or the officer's designee before leaving his assigned district.” (Doc. 82 at 3). However, Mr. Emmings was permitted, and even encouraged, by the district court to remain in California, where he was living. (Doc. 143, Exhibit 6). He could not logically have an assigned district in Montana that he was not allowed to leave without permission, while also living in California.

Another condition was that Mr. Emmings obtain approval over anywhere he resided and make his residence open for home visits. (Doc.

82). However, there was no probation officer to approve of or visit his residence in California. Mr. Emmings' conditions required him to submit to searches under reasonable suspicion. (Doc. 82). But again, there was no probation officer to conduct these searches in California. He was required to submit to drug and alcohol tests on a random or routine basis. (Doc. 82). But he could not travel to Montana to comply with those tests. He was required to obtain a chemical dependency evaluation by a state-approved evaluator. (Doc. 82). There is no evidence that there are any evaluators in California who are approved by the State of Montana. Mr. Emmings was required to complete counseling focused on violence, controlling behavior, dangerousness, and chemical dependency by a state-approved counseling providers and follow their recommendations. (Doc. 82). Again, there was no evidence that there were available providers in California who were approved by the State of Montana.

The district court found that Mr. Emmings' probation conditions were impossible and dismissed the petition to revoke. (Doc. 147). The district court held that "The Court Order on reimposition of probationary sentence... put conditions in place that were

unquestionably illegal, contradictory, and made it impossible for Mr. Emmings to be able to stay in compliance with probation.” (Doc. 147 at 3). The district court focused on the idea that Mr. Emmings had been banished from Montana—not just permitted to stay in California but required to stay there. (Doc. 147). Regardless whether Mr. Emmings had been “banished,” his probation conditions were clearly impossible for the reasons explained in this section.

It was impossible for Mr. Emmings to comply with his conditions of probation while living in California. The district court was very clear that Mr. Emmings was not required to return to Montana, and that the complaining witnesses in the case would prefer if he remained in California. (Doc. 143, Exhibit 6; *see* Evidentiary Tr. at 51, 59, 75, 76). However, many of Mr. Emmings’ conditions plainly required him to be on active supervision with Montana DOC, which was impossible while residing in California. Mr. Emmings never received guidance on which of his probation conditions he had to follow while living in California and which ones he did not. To the contrary, he was told to follow all the conditions “precisely as ordered” in his original judgment. (Doc. 143, Exhibit 6.) Because it was impossible for Mr. Emmings to comply with

his probation conditions, the State could not file a petition to revoke his sentence for his failure to comply with those conditions. The district court properly dismissed the petition to revoke.

**B. The probation conditions were also impossible for the Montana Department of Corrections to enforce.**

The Montana Department of Corrections cannot actively supervise a probationer who lives outside of Montana. In Montana, probation offices are divided into districts, and probation officers are assigned to serve in those districts. Mont. Code Ann. § 46-23-1004(1). Nowhere does the Legislature allow probation officers to supervise someone not in the state of Montana. *See* Mont. Code Ann. §§ 46-23-101 to 46-23-1115.

Montana is part of the Interstate Compact for Adult Offender Supervision, which allows probationers to move states and be supervised by a probation officer who is employed by the state to which they move. Mont. Code Ann. § 46-23-1115. Mr. Emmings' probation officer stated that he did not believe Mr. Emmings qualified for the Interstate Compact in California. (Doc. 91 at 7). There is no other statutorily-approved way to actively supervise a Montana defendant outside the state of Montana. Because Mr. Emmings' probation conditions were impossible for him to comply with or for DOC to

enforce, the district court rightly dismissed the State's petition to revoke on this basis.

**CONCLUSION**

This Court should affirm the district court's January 29, 2025, order granting Mr. Emmings' motion to dismiss.

Respectfully submitted this 23rd day of July, 2025.

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this response brief is printed with a proportionately spaced Century Schoolbook 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 6,668, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Emma N. Sauve  
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## CERTIFICATE OF SERVICE

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