

## APPENDIX

### A

APPENDIX A

Douglas P. Pasquinzo, #3019422  
700 Conley Lake Rd  
Deer Lodge, Montana 59722

In the  
SUPREME COURT OF THE STATE OF MONTANA

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STATE OF MONTANA,	Cause No: 24-0676 APPELLANT'S OPENING BRIEF ON APPEAL
Plaintiff-Appellee,	
-vs-	
DOUGLAS P. PASQUINZO, Defendant-Appellant.	

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Comes now Douglas P. Pasquinzo, the Appellant, to hereby appeal the decision by the Montana Fifth Judicial District Court, in cause no: DC-22-2015-42, dated October 31, 2024, signed by the Hon. Luke Berger.

The Appellant presented a Motion to Dismiss Judgment and Information due to Void Judgement. That pleading and subsequent pleadings are incorporated here.

This Motion was based on the record and the documented violations to the Due Process of Law, as demanded by the Fourteenth Amendment of the U.S. Constitution, and Art. II, Sect. 17, of the Montana Constitution; inclusive in the Fifth Amendment of the U.S. Constitution.

The Montana Rules of Civil Procedure, and Montana Statute MCA: §46-11-205, Amending information as to substance or form; which states:

- "(1) The court may allow an information to be amended in matters of substance at any time, but not less than 5 days before trial, provided that a motion is filed in a timely manner, states the nature of the proposed amendment, and is accompanied by an affidavit stating facts that show the existence of probable cause to support the charge as amended. A copy of the proposed amended information must be included with the motion to amend the information.
- (2) If the court grants leave to amend the information, the defendant must be arraigned on the amended information without unreasonable delay and must be given a reasonable period of time to prepare for trial on the amended information.

The State of Montana filed an Amended information on June 15, 2016; without having moved for leave to file the Amended Information, nor did the district court grant leave to file the amended information. See attached case registry, at Doc.Seq. 18.000.

The record is clear that the State violated the Rules of Criminal Procedure, at MCA: §46-11-205, and the Due Process of Law. At that point the State district court lost its subject matter jurisdiction to continue, and based upon the long standing 'Fruit of the Poisionous Tree' doctrine, this conviction and judgement can not stand as legal. The district court defied U.S. Supreme Court caselaw principles.

The Fifth Judicial District Court has abused it's discretion by ignoring the legal procedure for a matter to be Amended, and as such also defied the U.S. Supreme Court's holding that a party MUST file a Motion for leave, followed by an Order ~~as~~ that grants the State leave to Amend, and THEN the State can file an Amended Information. Not before as the County Prosecutor did here. See *Montana v Wyoming*, U.S. Lexis 8446, at 361. This was cited to the district court and was ignored and demonstrates the unfairness in the district court to allow the Jefferson County Attorney representing the State to act "Above the Law", and that courts 'Bad Faith' bias, in favor of the County Attorney. Both Actionable to the Commission on Practice, and the Judicial Standards Commission, as well as issues to be placed before the Montana Legislature.

Thus the underlying conviction and judgement are void for lack of subject-matter jurisdiction.

The U.S. Supreme Court has held that, NO ONE is above the law. See *Trump v Vance*, "In our system of government, as this Court has often stated, no one is above the law." *Trump v Vance*, 591 US 786, 812, 140 S.Ct 2412(2020).

"It is not enough to recite sayings like 'no man is above the law' and 'the public has a right to every man's evidence.' ... These sayings are true ~~and~~ and important—but they beg the question, The law applies equally to all persons..." *Id* at 836.

The Law is the Law, and the court can NOT legally disregard it and still claim to maintain it's integrity, where that court has lost all subject-matter jurisdiction once the court itself has violated the Statutory Due Process of Law.

The Law is explicit as written and interpreted by the Montana Supreme Court, and the Higher Courts, concerning the LACK of subject-matter jurisdiction:

#### CONTROLLING CASELAW STANDARDS

"Subject matter jurisdiction is subject to challenge or review at any time on motion, or *sua sponte* by the court, and can not be established or maintained by consent or waiver of the parties."

*Gottlob v DeRosier*, 2020 MT 210, P7; *Stanley v Lemire*, 2006 MT 304, ¶31-32.

"Similarly the United States Supreme Court, recently observed that subject matter jurisdiction, because it involves the court's power to hear the case, can never be forfeited or waived. Moreover, the Courts, including this Court, have an independent obligation to determine whether subject matter exists, even in the absence of challenge."

*Stanley* at P32; citing *Arbaugh v Y & H Corp.*, 546 US 500, 514, 126 S.Ct 1235, 1244, 163 L.Ed.2d 1097(2006).

"Once jurisdiction has been challenged the court cannot proceed when it clearly appears the court lacks jurisdiction." *Joyce v United States*, 474 F.2d 215 (3rd Cir. 1973).

"There is no discretion to ignore lack of jurisdiction." *Joyce* at 215.

"The Law provides that once State and Federal jurisdiction has been challenged, it must be proven." *Me v Thibutot*, 448 US 1, 100 S.Ct 2502(1980).

Neither the Fifth Judicial District Court jurist, nor the Jefferson County Attorney has proven that the District Court could maintain subject-matter jurisdiction, after the County Attorney Amended the Information, without first being granted leave to do so. Thus the criteria in *Me v Thibutot*, is met, and the court clearly lacked the required subject-matter jurisdiction to proceed, after violating the Defendant Douglas Pasquinzo's Right to Due Process. Relief should now be granted for such.

"The Judgment of conviction pronounced by a court without jurisdiction is void..." *Johnson v Zerbst*, 304 US 458,468, 58 S.Ct. 1019(1938).

"A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court— as the Sixth Amendment requires— by providing [Competent] counsel..." *Zerbst* at 468.

The Appellant-Defendant Pasquinzo was denied competent counsel, who DID NOT, at any time challenge the fact that the court lost subject-matter jurisdiction, by it excusing the County Attorney's Amended Information without leave from the Court.

Based on the record, and legal principle that the Appellant can challenge the district courts subject-matter jurisdiction at any time, per *Gottlob* at P7, the district court was bound by law to vacate this matter for lack of subject-matter jurisdiction, at the instant point that the Appellant's Right to the Due Process of Law was violated, and the matter could NOT proceed. The defense counsel's duty is to know the law, and as such was required to file or orally demand that the court no longer proceed for the lack of subject-matter jurisdiction, as the district court could no longer hear the case, per *Stanley* and *Arbaugh* precedence, which still stands and is binding in this matter.

Granting Summary Judgment to the Defendant is the proper procedural avenue, here where the County Attorney, representing the State, did not brief or dispute the fact that subject-matter jurisdiction was lacking based on his procedural error, which by law is defined as being waived.

The Montana Rules of Civil Procedure apply at this point under Rule 12(b) and (h), 12(b): Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial hearing.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:  
(1) lack of subject-matter jurisdiction.

12(h) Waiving and preserving Certain Defenses. §(1)(B) failing to either:

§(ii) include it in a responsive pleading...as a matter of course.

The State thus waived the fact that the District Court lacked the required subject-matter jurisdiction. The 'Rule of Law' is very clear, that once an issue is waived, that waiver can not be excused.

## CONTROLLING WAIVER AUTHORITY:

Wood v Milyard, 566 US 463,466,132 S.Ct. 1826(2012)

"A court is not at liberty, we have caustioned, to bypass, override, or excuse a state's deliberate waiver..."; See Day v McDonough, 547 US 198,202,210, n.11 126 S.Ct 1675.(2006).

Based on controlling Supreme Court law, the district court has abused its discretion for disregarding the fact that the State waived the issue of lack of subject-matter jurisdiction, where the State was excused from disregarding state statute and procedure concerning an amended information.

## CONTROLLING INEFFECTIVE ASSISTANCE OF COUNSEL AUTHORITY:

Strickland v Washington, 466 US 668, 104 S.Ct 2052(1984).

Wong v Belmontes, 558 US 15,16-17, 130 S.Ct 383(2009).

"To prevail on this claim, Belmontes [Like Pasquinzo here] must meet both the deficient performance and prejudice prong of Strickland, 466 US at 687, 104 S.Ct 2052,80 L.Ed.2d 674. To show deficient performance...must establish that "counsel's representation fell well below an objective standard of reasonableness Id at 688.

"To establish prejudice, [Pasquinzo] must show a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." Strickland at 694, Wong at 19.

In relation to the lack of subject-matter jurisdiction, a competent attorney as defense counsel for defendant Pasquinzo, would have known the laws concerning amending information, and objected to the State's failure to obtain leave to amend the information, per State Statute. Counsel did thus prejudice the defendant, to not object to this violation of the 'Rule of Law'.

Based upon this 5th and 6th Amendment violation of the U.S. Constitution, the defendant should have never been convicted, without the required subject-matter jurisdiction, after the district court and the County prosecutor violated the Appellants Right to the Due Process of Law,

Pursuant to Article VI, Paragraph 2 of the United States Constitution, also known as the Supremacy Clause, which states:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

When a judge or panel of judges violate the Supremacy Clause, it is an usurpation of power and authority which that court and jurist do NOT have, for disregarding the Constitution and the Supremacy Clause. Such Judicial Misconduct undermines the rule of law, with judicial consequences based on this overreach which undermines the stability of the legal system, and destroys the integrity of the court, and the public confidence in the Courts, which the public's taxes pay to be honest and fair.

CONTROLLING STRUCTURAL ERROR AND BIAS AUTHORITY:

Weaver v Massachusetts, 582 US 286, , 137 S.Ct. 1899(2017)

"this Court "adopted the general rule that a constitutional error does not automatically require reversal on a conviction." Arizona v Fulminate, 499 US 279, 306, 111 S.Ct 1246, 113 L.Ed.2d 302(1991).

"The Court recognized, however that some errors should not be deemed harmless beyond a reasonable doubt." Weaver at 294.

"These errors came to be known as structural errors." Fulminate at 309-310, Weaver at 294.

"The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of a criminal trial. Thus, the defining feature of a structural error is that it "affects the framework within which the trial proceeds". Fulminate at 310, Weaver at 295.

The Montana District Court lost its subject-matter jurisdiction when it violated the Due Process of Law, for Amending Information without leave granted to the State.

Without subject-matter jurisdiction the structural error is self evident, which "affects the framework within the trial proceeds."

The case of State v Pasquinzo here then lost all controversy, which the United States Constitution requires per Article III, Section 2:

"The judicial power shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or shall be made, under that authority;...to controversies to which the United States shall be party..."

With the district court's abuse of discretion as shown, by continuing this matter without the required subject-matter jurisdiction, in favor of the State, bias is clearly shown, and is unconstitutional by law:

Due Process guarantee an absence of actual bias on the part of the judge." In re Murchison, 349 US 133, 136, 75 S.Ct 633, 99 L.Ed.942(1955).

The District Court violated the Due Process Clause of the Fourteenth Amendment by allowing this matter to proceed without subject-matter jurisdiction, which clearly demonstrates his bias in favor of the State, which is grounds for his self recusal.

RELIEF

Based on the record, and the pleadings attached herein, which conclusively show cause for relief due to the violations of Statutory and Constitutional Law, the Appellant asks that the Court order that this matter be remanded back to the district court to vacate the single charge, with prejudice, at the courts earliest convenience.

Dated this 5th day of February, 2025. *Douglas P. Pasquinzo*

Douglas P. Pasquinzo.

## APPENDIX

### B

Date: 1/28/2021

Time: 07:49 AM

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Case Register Report  
DC-22-2015-0000042-IN

State of Montana vs. DOUGLAS P. PASQUINZO

Filed: 9/30/2015  
Subtype: Information

**Status History**

Open	9/30/2015
Pending	9/30/2015
Active	10/7/2015
Closed	6/28/2016

**Prosecutors**

JOHNSON, MATHEW J.,	(No longer on case)	Do Not Send Notices
HADDON, STEVEN C.,	(Primary attorney)	Send Notices

**Defendants**

Def. no. 1 PASQUINZO, DOUGLAS P.

**Attorneys**

Eastman, Mariah A.	(Primary attorney)	Send Notices
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**Charges**

No.	Revision	Statute	Description
1	Original:	201405	45-5-503
1	Amended:	201405	45-5-502(1) [2]
2	Original:	201405	45-5-503
2	Amended:	201405	45-5-502(1) [2]

**Judge History**

Date	Judge	Reason for Removal
9/30/2015	Tucker, Loren	Current

**Register of Actions**

Def.	Doc. Seq.	Entered	Filed	Text	Judge
1	1.000	09/30/2015	09/30/2015	Motion For Leave to File Information; Affidavit	Tucker, Loren
1	2.000	09/30/2015	09/30/2015	Order	Tucker, Loren
1	3.000	09/30/2015	09/30/2015	Information	Tucker, Loren
1	4.000	10/05/2015	10/05/2015	Minute Entry	Tucker, Loren
1	5.000	10/06/2015	10/06/2015	Fax Copy of Unopposed Motion to Modify Time of Hearing (10/6/2015 Replaced with Original)	Tucker, Loren
1	6.000	10/07/2015	10/07/2015	Order Modifying Time of Hearing; Copy of Letter	Tucker, Loren
1	7.000	10/07/2015	10/07/2015	Minute Entry	Tucker, Loren
1	8.000	10/07/2015	10/07/2015	Bail Order Setting Bond and Conditions and Acknowledgment	Tucker, Loren
1	9.000	11/13/2015	11/13/2015	Omnibus Order	Tucker, Loren
1	10.000	11/30/2015	11/30/2015	Praecipe for Subpoena; One Subpoena Issued	Tucker, Loren
1	11.000	12/11/2015	12/11/2015	Witness List	Tucker, Loren
1	12.000	02/01/2016	02/01/2016	Motion to Continue Trial Date; PROPOSED ORDER	Tucker, Loren
1	13.000	02/01/2016	02/01/2016	Fax Copy of Order Continuing Pre-Trial & Trial Date (2/3/2016 Replaced with Original)	Tucker, Loren
1	14.000	05/26/2016	05/26/2016	Minute Entry	Tucker, Loren

Date: 1/28/2021

Time: 07:49 AM

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Case Register Report  
DC-22-2015-0000042-IN

**State of Montana vs. DOUGLAS P. PASQUINZO**

**Register of Actions**

Def.	Doc. Seq.	Entered	Filed	Text	Judge
1	15.000	06/07/2016	06/07/2016	Fax Copy of Unopposed Motion to Continue Change of Plea One Week; (6/15/2016 Replaced with Original)	Tucker, Loren
1	16.000	06/08/2016	06/08/2016	Order Resetting Change of Plea One Week	Tucker, Loren
1	17.000	06/15/2016	06/15/2016	Minute Entry	Tucker, Loren
1	18.000	06/15/2016	06/15/2016	Amended Information	Tucker, Loren
1	19.000	06/15/2016	06/15/2016	Acknowledgement of Rights and Plea Agreement	Tucker, Loren
1	20.000	06/28/2016	06/27/2016	Findings, Judgment and Sentence	Tucker, Loren
1	21.000	06/28/2016	06/28/2016	Notice of Right to Apply for Review of Sentence	Tucker, Loren
1	22.000	05/30/2017	05/30/2017	Request for Production of Transcripts	Tucker, Loren
1	23.000	08/21/2017	08/21/2017	Request for Extention (sic) of Time	Tucker, Loren
1	24.000	08/24/2017	08/24/2017	Order Granting Extension (Faxed Copy--8/28/2017 Replaced with Original)	Tucker, Loren
1	25.000	11/06/2017	11/06/2017	Motion and Order Pursuant to Rule 1.16(d), Code of Attorney Professional Conduct (No Order Provided)	Tucker, Loren

## APPENDIX

### C

FILED

04/28/2025

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA  
Case Number: DA 24-0676

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. DA 24-0676

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

DOUGLAS P. PASQUINZO,

Defendant and Appellant.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana Fifth Judicial District Court,  
Jefferson County, The Honorable Luke Berger, Presiding

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AND APPELLEE

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## **STATEMENT OF THE ISSUES**

Whether the district court erred when it denied Pasquinzo's motions in which he used the Montana Rules of Civil Procedure to challenge his criminal convictions for sexual assault.

## **STATEMENT OF THE CASE**

Pasquinzo pleaded no contest to two counts of sexual assault pursuant to a plea agreement in which two counts of sexual intercourse without consent were dismissed. (Docs. 19, 20.)

Pasquinzo did not appeal. He filed a petition for postconviction relief, which the district court denied on August 22, 2018. *Pasquinzo v. State*, 2019 MT 246N, ¶ 7. Pasquinzo appealed that denial, and this Court affirmed in 2019. *Id.*

In 2024, Pasquinzo filed multiple motions in the district court seeking relief from his conviction. (Docs. 29, 32-34.) The court denied all of the motions in a single order. (Doc. 40, available at Appellant's App.) He appeals the order denying his motions.

## **STATEMENT OF THE FACTS**

### **I. Underlying criminal case**

Pasquinzo was charged with two counts of sexual intercourse without consent. (Doc. 3.) The victim was his seven-year-old granddaughter. (Doc. 1.) Because the

victim was under the age of 12, both charges carried mandatory minimum sentences of 100 years, 25 years of which could not be suspended, and a minimum 25-year parole eligibility restriction. Mont. Code Ann. § 45-5-503(4)(a)(i) (2013); (Docs. 3, 19 at 2).

Pasquinzo and the State entered into a plea agreement in which the State agreed to dismiss both counts of sexual intercourse without consent, in exchange for Pasquinzo pleading no contest to two counts of sexual assault. (Doc. 19 at 2, 4.) The parties agreed to recommend that Pasquinzo be sentenced to the Department of Corrections for a term of 20 years, with 15 of those years suspended, on both counts, with the sentences running concurrently. (*Id.* at 4.)

At the change of plea hearing, the court advised Pasquinzo of his rights and confirmed that he was knowingly and voluntarily waiving these rights, including his right to appeal. *Pasquinzo*, ¶ 5. Pasquinzo pled no contest to two counts of sexual assault and confirmed that the State would be able to prove the allegations beyond a reasonable doubt. *Id.*; (Doc. 20).

The Court declined to adopt the recommendation in the plea agreement and instead sentenced Pasquinzo on each count to 15 years in prison with 5 years suspended, with both sentences running concurrently. (Doc. 20 at 2.)

## **II. Pasquinzo's motions challenging his convictions**

In August and September 2024, Pasquinzo filed motions labeled: Motion for Summary Judgement, Based on Lack of Subject Matter Jurisdiction (Doc. 29); Defendant's Motion to Dismiss Judgement and Information Due to Void Judgement (Doc. 32); Defendant's Motion for a Hearing on Summary Judgement, MT. R. Civ. P. 56(c)(2)(A) (Doc. 33); Defendant's Motion for "Request for Information" Under Rule 36, F.R.Civ.P. and MT.R.Civ.P. Discovery (Doc. 34); and Defendant's Motion for 'Relief From Judgment' Per Mt.R.Civ.P. 60(b)(4) Void Judgment, Lack of Subject-Matter Jurisdiction (Doc. 37). The State responded to most of Pasquinzo's motions. (Docs. 30, 35, 36.)

The court denied all four of the motions, noting that Pasquinzo was relying on rules of civil procedure, which have no application to his criminal proceedings. (Appellant's App. at 2-3.) The court concluded that "Pasquinzo's arguments in all four of his Motions are baseless applications of the Rules of Civil Procedure to his criminal proceedings. These arguments are also attempts to have additional bites at the apple for post-conviction relief." (*Id.* at 2.) The court stated that "Pasquinzo shall not be afforded the opportunity to continually attempt to relitigate these matters through inappropriate avenues or title arguments differently to gain relief." (*Id.*) The court also warned Pasquinzo that "future filings, if deemed vexatious,

may subject him to classification as a vexatious litigant requiring pre-filing review by the Court.” (*Id.*)

### **SUMMARY OF THE ARGUMENT**

Pasquinzo’s motions improperly used the Montana Rules of Civil Procedure to attempt to bring new challenges to his convictions. The district court correctly denied his motions because the Rules of Civil Procedure cannot be used to challenge a criminal conviction.

Further, Pasquinzo’s claim fails on the merits. The amendment of the information to lesser charges did not violate Mont. Code Ann. § 46-11-205. The amendment to lesser-included offenses was an amendment as to form, so the requirements for an amendment as to substance do not apply. The information was amended pursuant to a plea agreement to allow Pasquinzo to plead guilty to lesser charges, thereby eliminating the mandatory minimum 100-year penalty.

Even if Mont. Code Ann. § 46-11-205 was violated, that violation would not deprive the court of subject matter jurisdiction because district courts have jurisdiction over felony cases. Therefore, any violation of Mont. Code Ann. § 46-11-205 would be waived by Pasquinzo’s guilty plea.

## **ARGUMENT**

### **I. Standard of review**

Whether a court erred in denying a motion to dismiss in a criminal case is a question of law that this Court reviews for correctness. *State v. Montgomery*, 2015 MT 151, ¶ 6, 379 Mont. 353, 350 P.3d 77.

### **II. The issues on appeal are limited to the issues raised in Pasquinzo's appellate brief.**

In Pasquinzo's appellate brief, he references his Motion to Dismiss Judgment and Information Due to Void Judgement, (Doc. 32), and then asserts, "That pleading and subsequent pleadings are incorporated here." (Appellant's Br. at 1.) Pasquinzo cannot incorporate arguments that are not contained in his brief or rely on incorporating by reference to develop his legal arguments.

This Court has explained that the Montana Rules of Appellate Procedure "preclude[ ] parties from incorporating trial briefs or any other kind of argument into appellate briefs by mere reference. Simply put, appellate arguments must be contained within the appellate brief, not within some other document." *State v. Ferguson*, 2005 MT 343, ¶ 41, 330 Mont. 103, 126 P.3d 463; *see also Stock v. State*, 2014 MT 46, ¶ 17 n.3, 374 Mont. 80, 318 P.3d 1053. The only arguments at issue on appeal are the arguments made in Pasquinzo's appellate brief.

### **III. The Montana Rules of Civil Procedure cannot be used to challenge a criminal conviction.**

The district court correctly concluded that “Pasquinzo’s arguments in all four of his Motions are baseless applications of the Rules of Civil Procedure to his criminal proceedings.” (Appellant’s App. at 2.) Montana Code Annotated § 46-1-103(1) provides that Title 46 “governs the practice and procedure in all criminal proceedings in the courts of Montana except where provision for a different procedure is specifically provided by law.” This statute demonstrates that the rules of criminal procedure, rather than the rules of civil procedure, govern challenges to a criminal conviction. The rules of criminal procedure provide that a criminal conviction can be challenged by a direct appeal or through postconviction proceedings. Mont. Code Ann. § 46-20-101; Mont. Code Ann. Title 46, ch. 21. Pasquinzo pursued postconviction relief, and this Court affirmed the denial of his petition. He cannot attempt to use rules of civil procedure to bring new challenges to his conviction.

This Court recently dismissed a similar appeal *sua sponte* from a defendant who attempted to use the rules of civil procedure to challenge his conviction. *State v. Pierce*, No. DA 24-0390, 2025 Mont. LEXIS 11 (Mont. Sup. Ct. Jan. 7, 2025). Pierce filed a motion under Rule 60(b) of the Montana Rules of Civil Procedure after this Court had denied his direct appeal and postconviction appeal. This Court concluded that his appeal was not properly before this Court,

concluding that “[h]e cannot utilize the Montana Rules of Civil Procedure to reopen his criminal case.” *Pierce*, \*3.

Similar to *Pierce*, *Pasquinzo* cannot use the Montana Rules of Civil Procedure to reopen his criminal case. Accordingly, the district court correctly denied all of his motions.

#### **IV. The district court had subject matter jurisdiction over *Pasquinzo*’s case.**

In addition to being raised in an improper forum, *Pasquinzo*’s claim fails on the merits. *Pasquinzo* argues the court lost its subject matter jurisdiction because the State violated Mont. Code Ann. § 46-11-205 by filing its amended information without seeking leave to file. This argument fails for two reasons: (1) Montana Code Annotated § 46-11-205 was not violated and (2) a violation of Montana Code Annotated § 46-11-205 would not deprive a court of subject matter jurisdiction.

##### **A. Montana Code Annotated § 46-11-205 was not violated when the State amended the information pursuant to the plea agreement.**

The State may initiate criminal charges by filing a motion for leave to file an information. Mont. Code Ann. § 46-11-201. An information that has been filed may be amended pursuant to Mont. Code Ann. § 46-11-205, which provides that:

(1) The court may allow an information to be amended in matters of substance at any time, but not less than 5 days before trial, provided that a motion is filed in a timely manner, states the nature of the

proposed amendment, and is accompanied by an affidavit stating facts that show the existence of probable cause to support the charge as amended. A copy of the proposed amended information must be included with the motion to amend the information.

(2) If the court grants leave to amend the information, the defendant must be arraigned on the amended information without unreasonable delay and must be given a reasonable period of time to prepare for trial on the amended information.

(3) The court may permit an information to be amended as to form at any time before a verdict or finding is issued if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

The amendment reducing Pasquinzo's charges from sexual intercourse without consent to sexual assault was not an amendment as to substance, so the procedure in Mont. Code Ann. § 46-11-205(1) does not apply. This Court has held that an amendment to a lesser-included offense is an amendment as to form, rather than substance *State v. Crawford*, 2016 MT 96, ¶ 39, 383 Mont. 229, 371 P.3d 381; *see also State v. LaFournaise*, 2022 MT 36, ¶ 27-29, 407 Mont. 399, 504 P.3d 486.

Further, a motion for leave to file an amended information was unnecessary because Pasquinzo entered into a plea agreement in which he agreed that the State would amend the information, and he would plead guilty to the reduced charges. (Doc. 19.) He then changed his plea pursuant to this agreement and received a significant benefit. (Doc. 20 at 1.) Nothing in Mont. Code Ann. § 46-11-205 prohibits the court from allowing the State to reduce charges pursuant to a plea

agreement so that the defendant can obtain the benefit of the plea agreement.

Pasquinzo has not demonstrated that Mont. Code Ann. § 46-11-205 was violated.

**B. A violation of Mont. Code Ann. § 46-11-205 would not deprive a court of subject matter jurisdiction.**

Pasquinzo's argument also fails because even if Mont. Code Ann. § 46-11-205 was violated, the court still had subject matter jurisdiction over the case. "Jurisdiction is 'the court's fundamental authority to hear and adjudicate cases or proceedings.'" *In re E.G.*, 2014 MT 148, ¶ 11, 375 Mont. 252, 326 P.3d 1092. A provision is "'jurisdictional' if it 'delineat[es] the classes of cases (subject-matter jurisdiction) . . . falling within a court's adjudicatory authority.'" *Miller v. Eighteenth Judicial Dist. Court*, 2007 MT 149, ¶ 43, 337 Mont. 488, 162 P.3d 121 (quoting *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004)); *see also In re E.G.*, ¶ 11.

The jurisdiction of a district court over criminal cases is governed by the Montana Constitution and Mont. Code Ann. § 3-5-302(1) and (1)(a), which provide that district courts in Montana have original jurisdiction in "all criminal cases amounting to felony[.]" Mont. Const. art. VII, § 4(1); Mont. Code Ann. § 3-5-302(1), (1)(a); *accord Montgomery*, ¶ 8.

A court's failure to comply with Mont. Code Ann. § 46-11-205 would not remove a court's subject matter jurisdiction over a felony case. This Court has held that whether an information included allegations establishing probable cause to support a charge is not a jurisdictional issue. *State v. Spreadbury*, 2011 MT 176,

¶ 10, 361 Mont. 253, 257 P.3d 392. In reaching that conclusion, this Court relied on cases from the United States Supreme Court and other state courts concluding that defects in a charging document do not deprive a court of the power to adjudicate the case. *Spreadbury*, ¶¶ 8-9 (citing *United States v. Cotton*, 535 U.S. 625 (2002), and other cases).

Similarly, this Court has explained that statutory time and notice prescriptions are not jurisdictional provisions. *In re E.G.*, ¶ 12. “Filing deadlines or notice requirements enacted by the Legislature do not affect a court’s fundamental subject matter jurisdiction, and the Legislature does not deprive courts of subject matter jurisdiction when it enacts filing or notice deadlines.” *Id.* A claim that statutory notice and hearing opportunities were violated raises a due process claim, but due process claims are not jurisdictional and can be waived. *Id.* When determining whether a provision is jurisdictional, the Legislature’s failure to designate a notice requirement jurisdictional is significant. *In re E.G.*, ¶ 13. “[U]nless a statute, rule, or constitutional provision expressly imposes jurisdictional limitations, the expiration of a time bar does not deprive a district court of the jurisdiction to further act in the matter before it.” *Green v. Gerber*, 2013 MT 35, ¶ 24, 369 Mont. 20, 303 P.3d 729.

Montana Code Annotated § 46-11-205 sets out a process for filing an amended information and a time limit for doing so (five days before trial). This

does not limit the court's authority to preside over the criminal case and is, therefore, not jurisdictional.

Because Pasquinzo's statutory violation claim is not jurisdictional, it was waived by his entry of his no contest pleas. *See Spreadbury*, ¶¶ 11-14. His claim thus fails both because there was not a statutory violation and because any alleged statutory violation is waived.

### CONCLUSION

The district court correctly denied Pasquinzo's motions challenging his convictions for sexual assault, and the convictions should be affirmed.

Respectfully submitted this 28th day of April, 2025.

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

By: /s/ Mardell Ployhar  
MARDELL PLOYHAR  
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 2,335 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

*/s/ Mardell Ployhar*  
\_\_\_\_\_  
MARDELL PLOYHAR

## **CERTIFICATE OF SERVICE**

I, Mardell Lynn Ployhar, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 04-28-2025:

Steven C. Haddon (Govt Attorney)  
P.O. Box H  
Boulder MT 59632  
Representing: State of Montana  
Service Method: eService

Douglas P. Pasquinzo (Appellant)  
Montana State Prison  
AO# 3019422  
700 Conley Lake Rd  
Deer Lodge MT 59620  
Service Method: Conventional

Electronically signed by LaRay Jenks on behalf of Mardell Lynn Ployhar  
Dated: 04-28-2025

## APPENDIX

### D

Douglas P. Pasquinzo, #3019422  
700 Comley Lake Rd.  
Deer Lodge, Montana 59722

In the  
SUPREME COURT FOR THE STATE OF MONTANA

STATE OF MONTANA,  
Appellee-Plaintiff,  
-vs-  
DOUGLAS P. PASQUINZO,  
Appellant-Defendant.

No: DA 24-0676  
REPLY BRIEF  
OF  
APPELLANT

Comes now Douglas P. Pasquinzo, the Appellant to reply to the Appellee's response in this action. The State of Montana's whole response brief is summarized that in criminal actions that the Montana Rules of Civil Procedure are not applicable.

The Appellant firmly states that the State's response is without merit where the lack of subject-matter jurisdiction is concerned.

This very Supreme Court of Montana has cited the Montana Rules of Civil Procedure in criminal matters, where a matter's subject-matter jurisdiction is at bar. The

The Court in State v Abe, 2001 MT 260, P16, as HN6 holds;

"Lack of subject matter jurisdiction can be raised at any time. Rule 12(h)(3), M.R.Civ.P.;"

The State did not respond to the lack of subject-matter jurisdiction in the State's response in District Court, and has thus lawfully waived that issue that the State lost subject-matter jurisdiction, where the State amended its charge, without permission or leave from the district court.

"In order for a court to act within its jurisdiction, it must have:(1) cognizance of the subject matter;(2) presence of the proper parties; and (3) the court's action must be invoked by proper pleadings and the judgment within the issues raised." Lee v Lee, 200 MT 67, P20, HN2.

"A court lacks or exceeds such jurisdiction by "any acts which exceed the defined power of the court in any instance, whether the power be defined by constitutional provision, express statutory declaration. or rules developed by the courts and followed under the doctrine of stare decisis...." Lee at P20.

Under the Doctrine of Stare Decisis, the Supreme Court has cited the Rules of Civil Procedure in its rulings, which clearly allows the Defendant to cite the same Rules of Civil Procedure.

"The Appellant court may make accommodations for pro se parties by relaxing technical requirements which do not impact on fundamental bases for appeal." Crawford v State, 2004 MT 309N,

The Defendant, as the Appellant here, is not an attorney, but an 84 year old man who just wishes for the court to correct the district court error, and mandate this as proper based on the 'Rule of Law' cited herein. That a:

"Court of Appeals will not hold the appellant to the same standards it requires of attorneys in stating his case." Becker v Montgomery, 532 US 757, 121 S.Ct 1801 (2001), at 761.

"...the discovery rules are liberally construed to make all relevant facts available to parties in advance of trial and to reduce the possibilities of surprise and unfair advantage."

Cox v Magers, 2018 MT 21, P15; Richardson v State, 2006 MT 43, ¶24.

The "fundamental bases" of this appeal, are that the district court lost the required subject-matter jurisdiction, where it violated the defendant Pasquinzo's Due Process Rights, and unlawfully allowed the State to Amend the charging information and discovery documents, without proper leave from the Court, nor allow the defendant a chance to oppose the Motion for Leave, if one had been properly filed.

This undeniably violates State law at MCA: §46-11-205. Amending information or form. §(2) "If the court grants leave to amend the information...".

The district court did NOT grant leave to Amend the Complaint.

The County Attorney, representing the State of Montana, took it upon himself to usurp power, which he did not possess, to Amend this matter without the court's permission.

See also MCA: §203-201. Legislative intent--Liberal construction.

"The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the people's business...The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of this part shall be liberally construed."

The Montana Supreme Court is a "public or government body", as generally defined as a group of individuals organized for a government or public purpose". See Choteau Acantha Publ'g, Inc. v Gianforte, 2025 MT 76, P12.

The Supreme Court's purpose to the public, is to see that the 'Rule of Law' is obeyed by the lower courts, at every level. The public has placed its trust in the election of the Supreme Court Justices that they will be consistent. The Court and the Federal laws are consistent in that where subject-matter jurisdiction is concerned the Rules of Civil Procedure have been cited in Criminal matters, and can be brought up at any time. The issue is not the Appellant has incorrectly cited the MT.R.Civ.P., but that the District Court for the Fifth Circuit, Jefferson County, under Judge Luke Berger violated the Appellants Due Process Rights, which is the "fundamental bases" for this appeal, Crawford *supra*.

The Jefferson County Attorney violated Pasquinzo's Constitutional Rights, by Amending the Complaint without leave from the court first being given.

"Any statute which allows for amendments without leave of the court conflicts with this constitutional provision." State v. Cardwell, 187 Mont. 370, 375, 609 P.2d 1230(1980 MT.S.Ct.).

".the clear and unambiguous meaning of Article II, Section 20, 1972 Montana Constitution. All criminal actions prosecuted— initiated and carried forward— by information must be examined and committed by a magistrate or must be carried forward after leave granted by the court. Thus, all stages of proceedings by information including amendments to the information must be reviewed by the court." Cardwell at 375.

"On amendment of an information, however, certain procedural safeguards must be imposed. The above discussion indicates amendments of substance can only be filed with leave of court." Caldwell at 375-376.

Pasquinzo's Constitutional Rights were violated at the time the Jefferson County Attorney Amended the Information, without legal leave from the court.

At that point the Jefferson County, Fifth Judicial District Court, lost it's subject-matter jurisdiction. Without such jurisdiction either subject matter or personal, the proceedings became illegal without "case" or "controversy", per Art.III of the U.S. Constitution.

The Defendant is NOT an attorney, but has presented undeniable court record of error in the Judicial system in Jefferson County, in this matter and possibly many others. Such defiance to the laws of the State of Montana can NOT be excused.

Per Cox v Magers, "discovery rules are liberally construed to make all relevant facts available to the parties in advance of trial, to reduce the possibilities of surprise and unfair advantage." The County Attorney for Jefferson County took "unfair advantage" of an elderly citizen who had been harrassed and tormented in the County Jail, and helped by undeniable Ineffectiveness of Counsel to recognize and object to the County Attorney's illegal amending of the Information/ complaint, and forced to take a plea based on unfulfilled promises by Counsel.

The Montana Supreme Court should recognize United States Supreme Court holdings in Wood v Milyard, 566 US 463,466,132 S.Ct 1826(2012):

"A court is not at liberty, we have cautioned, to bypass, overide, or excuse a state's deliberate waiver..."; see Day v McDonough, 547 US 198,202,210, n.11 126 S.Ct 1675(2006).

Based on the above controlling authority, the district court has abused it's discretion for disregarding the fact that the State legally waived the issue that the court lacked subject-matter jurisdiction, where the district court illegally excused the State for disregarding State Statute and procedure, concerning an amended information. Surely the Supreme Court for Montana will not also excuse the State's waiver, in violation of 'Clearly Established' U.S. Supreme Court authority.

The Montana District Court for the Fifth Judicial District Court, in this matter could not maintain subject-matter jurisdiction, once it violated the Defendant and Appellant's Due Process Rights.

"A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court—as the Sixth Amendment requires—by providing competent counsel...Johnson v Zerbst, 304 US 458,468, 58 S.Ct 1019(1938).

The court itself and the county prosecutor both denied the Appellant his Due Process rights by circumventing and ignoring clearly established procedural law. At the point that the County Attorney filed the Amended Complaint, without leave from the Court, subject-matter jurisdiction was lost, "in the course of the proceedings".

From that point any judgement was void.

The State did not respond to the Appellant-Defendant's "Motion to Dismiss Judgment and Information Due to Void Judgment", but which the Appellant incorporates here in its entirety, and the issues, claims and governing jurisprudence caselaw therein. The State claims that Pasquinzo can not apply the Rules of Civil Procedure as the 'Statement of the Issues'. OK fine, but regardless of that Federal Law and State Law prohibit the County Attorney from Amending a complaint or information without permission from the Court, or "Leave" to do so as used in legal verbage.

In the Defendant-Appellants Brief in Reply to the State's Response, at the district court level here, the Defendant Pasquinzo cited state controlling statute. MCA: §46-11-111. Amending Complaint. "A court may allow a complaint to be amended under the same circumstances and in the same manner as an information as provided in 46-11-205.

MCA: §46-11-201. "(1) The prosecutor may apply directly to the district court for permission to file an information against a named defendant."

MCA: §46-11-205. "Amending information as to the substance or form. (2) If the court grants leave to amend the information, the defendant must be arraigned on the amended information without reasonable delay and must be given a reasonable period of time for trial on the amended information."

None of these laws as ratified by the Montana Legislature were abided by here, and the County Attorney usurped power he did NOT legally possess to Amend this matter without permission or leave to do so first granted by the court.

Again, subject-matter jurisdiction was lost, which can be brought up at any time, per State and federal law.

"Once jurisdiction has been challenged the court cannot proceed when it clearly appears the court lacked jurisdiction." Joyce v U.S, 474 F.2d 215(3rd Cir. 1973).

"The law provides that once State and Federal jurisdiction has been challenged, it must be proven." Me v Thibutot, 448 US 1, 100 S.Ct.2502(1980).

Subject-matter jurisdiction was challenged in the district court, and the County Attorney for Jefferson County refused to prove jurisdiction was proven. Thus waived it.

## CONCLUSION

The Supreme Court for the State of Montana has consistently held that the law is the law, has written by the legislature; and interpreted by this Court, in obeyance to the laws of Montana and the United States.

Montana Laws as cited demand that the State obey procedural law concerning amending a complaint, as cited herein, §46-11-111, §46-11-201, and §46-11-205.

Public confidence in the court system is at bar, as is the laws governing an attorney to represent the public and State, per the Montana Rules of Professional Conduct. Most especially Rule 3.4, Fairness and Rule 3.8 Special Responsibilities of a Prosecutor. How can the public maintain confidence that their tax dollars are being well spent?

The Appellant asks that the Court remand this matter to the District Court, for dismissal, as demanded by the United States Supreme Court.

"when a federal court concludes that it lacks subject-matter jurisdiction, the complaint must be dismissed in its entirety." Arbaugh v Y & H Corp., 546 US 500, 126 S.Ct 1235(2006) at 514.

"Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject-matter, the court shall dismiss the action." Kontrick v Ryan, 540 US 443,455, 124 S.Ct 906, 157 L.Ed.2d 867(2004). See also Smith v Butte Pre-Release, 2021 U.S. Dist. Lexis 209572 (U.S. Dist.MT. 2021), at 3.

"See Rule 12(h)(3), M.R.Civ.P. ("whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction on the subject matter, the court shall dismiss the action"). See State v Abe, 2001 MT 260, P16 [A criminal Case].

The State's prior refusal to brief the lack of subject matter jurisdiction, thus constitutes a waiver, and the court is NOT at liberty to continue, and thus the district court should have dismissed the action in its entirety. But because it did not, then prejudice is established, and is also a Due Process violation, as cited.

## RELIEF

The Appellant asks that this court remand this case back to the district court for the above violations of law, and prejudice; with the order to dismiss the underlying criminal charges for lack of subject-matter jurisdiction, as shown and waived by the State of Montana, and governed by Law.

Dated this    day of May, 2025.

Douglas P. Pasquinzo.

## CERTIFICATE OF SERVICE

I, Douglas P. Pasquinzo, do hereby certify that a true and accurate copy of this Reply is sent to the Montana, Attorney General.

Douglas P Pasquinzo.

## APPENDIX

### E

FILED

07/08/2025

Bowen Greenwood

CLERK OF THE SUPREME COURT

STATE OF MONTANA

Case Number: DA 24-0676

DA 24-0676

IN THE SUPREME COURT OF THE STATE OF MONTANA

2025 MT 153N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

DOUGLAS P. PASQUINZO,

Defendant and Appellant.

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APPEAL FROM: District Court of the Fifth Judicial District,  
In and For the County of Jefferson, Cause No. DC 2015-0042  
Honorable Luke Berger, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Douglas P. Pasquinzo, Self-Represented, Deer Lodge, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Mardell Ployhar,  
Assistant Attorney General, Helena, Montana

Steve Haddon, Jefferson County Attorney, Boulder, Montana

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Submitted on Briefs: June 25, 2025

Decided: July 8, 2025

Filed:

  
\_\_\_\_\_  
Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Douglas P. Pasquinzo appeals from an order entered in the Fifth Judicial District Court, Jefferson County, denying several motions he filed seeking relief from his conviction. We affirm.

¶3 Pasquinzo pleaded no contest to two counts of sexual assault in 2016. He was sentenced to two consecutive terms of 15 years with 5 years suspended to the Montana State Prison. Pasquinzo did not appeal. He filed a petition for post-conviction relief which the court denied on August 22, 2018. This Court affirmed the denial of post-conviction relief on October 15, 2019. *Pasquinzo v. State*, No. DA 18-0687, 2019 MT 246N, 2019 Mont. LEXIS 602.

¶4 In August and September 2024, Pasquinzo filed in District Court a summary judgment motion alleging lack of subject matter jurisdiction, a motion to dismiss his Judgment and Information, a request for information pursuant to F. R. Civ. P. 36 and M. R. Civ. P. 36, as well as a M. R. Civ. P. 60(b)(4) motion for relief from judgment. Following a response from the State, the District Court denied Pasquinzo's motion because civil motions have no application in a criminal proceeding. The court also cautioned

Pasquinzo about filing frivolous motions and placed him on notice that any future filings may cause the court to classify Pasquinzo as a vexatious litigant.

¶5 Section 46-1-103(1), MCA, provides that Title 46 “governs the practice and procedure in all criminal proceedings in the courts of Montana except where provision for a different procedure is specifically provided by law.” The rules of criminal procedure, not the rules of civil procedure, apply in criminal proceedings. Additionally, the Federal Rules of Civil Procedure are not applicable in state courts.

¶6 Pasquinzo’s motions were not properly before the District Court and his appeal is not properly before this Court. Accordingly, the District Court correctly denied his motions.

¶7 Affirmed.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

/S/ LAURIE McKINNON

We Concur:

/S/ JAMES JEREMIAH SHEA  
/S/ KATHERINE M BIDEGARAY  
/S/ BETH BAKER  
/S/ INGRID GUSTAFSON