

Sentence Review Division  
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SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA

STATE OF MONTANA, ) Cause No. DC-39-2022-0000029-IN  
)  
Plaintiff, ) Powell County District Court  
)  
-vs- ) Montana Third Judicial District  
)  
JOHN THURLOW MOSBY, ) **AMENDED DECISION**  
)  
Defendant. )

On August 9, 2022, per the Global Plea Agreement, the Defendant was sentenced as follows: Count I: a commitment to a State prison designated by the Montana Department of Corrections for one (1) year for the offense of Assault with Bodily Fluid, a Felony, in violation of §45-5-214, MCA; Count II: a commitment to a State prison designated by the Montana Departments of Corrections for one (1) year for the offense of Assault with Bodily Fluid, a Felony, in violation of §45-5-214, MCA, to run consecutively to Count I.

Counts I and II were ordered to be served consecutively to the sentence in DC-21-117.

On May 5, 2023, the Defendant's Application for review of that sentence came on for hearing by Zoom videoconference before the Sentence Review Division of the Montana Supreme Court (hereafter "the Division"). The Defendant appeared from the Montana State Prison and was represented by David Merchant, Defense Counsel. The State was not represented.

Before hearing the Application, the Defendant was advised that the Division has the authority not only to reduce the sentence or affirm it, but also increase it. The Defendant was further advised that there is no appeal from a decision of the Division. The Defendant acknowledged that he understood this and stated that he wished to proceed. The Defendant gave a statement.

Rule 12, Rules of the Sentence Review Division of the Supreme Court of Montana, provides that, "The sentence imposed by the District Court is presumed correct. The sentence shall

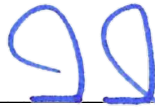
not be reduced or increased unless it is clearly inadequate or clearly excessive." (Section 46-18-904(3), MCA).

The Division concluded that the sentence imposed by the District Court is clearly excessive in that it imposes a consecutive sentence to the underlying sentence.

Therefore, it is the unanimous decision of the Division that the sentence shall be **AMENDED** to reflect that the sentences in Count I and Count II shall run **concurrently** with each other. The sentences in Counts I and II shall run consecutively to the sentence in DC-21-117. The sentence, terms and conditions imposed in the Judgment of August 9, 2022 are not clearly excessive and are affirmed.

DATED this 17th day of May, 2023.

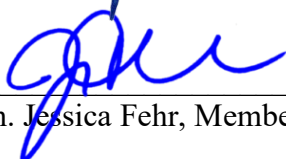
SENTENCE REVIEW DIVISION



Hon. Dan Wilson, Chair



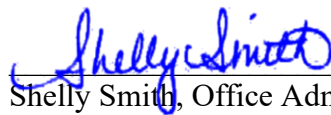
Hon. Luke Berger, Member



Hon. Jessica Fehr, Member

Copies mailed or emailed this 17th day of May, 2023, to:

- Clerk of District Court – *via email*
- John Thurlow Mosby #3026413, Defendant
- Hon. Ray Dayton – *via email*
- David Merchant, Defense Counsel – *via email*
- Patrick Moody, Esq. – *via email*
- Board of Pardons and Parole – *via email*
- MSP - Records Dept. – *via email*



Shelly Smith, Office Administrator  
Sentence Review Division