

Sentence Review Division
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FILED

MAY 18 2022

SENTENCE REVIEW DIVISION
OF THE SUPREME COURT
STATE OF MONTANA

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA

STATE OF MONTANA,) Cause No. DC-12-012
)
Plaintiff,) Big Horn County District Court
)
-vs-) Montana Twenty-Second Judicial District
)
DUANE ALLEN SWANK, JR.,)
) **AMENDED DECISION**
)
Defendant.)

On August 31, 2021, the Court found the Defendant in violation of the conditions of the sentence imposed on February 17, 2016, revoked the suspended sentence, and sentenced the Defendant to a prison designated by the Montana Department of Corrections for a period of four (4) years for the offense of Count I: Robbery, a felony, in violation of §45-5-401 MCA. The Defendant was given credit for jail time served in the amount of 237 days. The Defendant also received street time credit in the amount of 66 days.

On May 5, 2022, 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 Connections Corrections Facility and was advised of his right to be represented by counsel. The Defendant proceeded without 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.

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 finds that the reasons advanced for modification are insufficient to hold that the sentence imposed by the District Court is clearly inadequate or clearly excessive.

Therefore, it is the unanimous decision of the Division that the sentence is AFFIRMED.

The Division clarifies that there is no parole restriction in the final disposition of order, nor is there a parole restriction in any other judgments in this case.

DATED this 8th day of May, 2022.

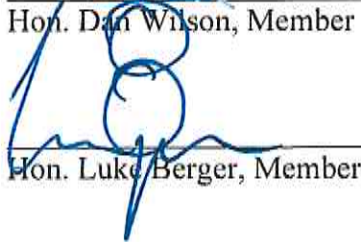
SENTENCE REVIEW DIVISION



Hon. Jessica Fehr, Chair



Hon. Dan Wilson, Member



Hon. Luke Berger, Member

Copies mailed or emailed this 18th day of May, 2022, to:

Clerk of District Court – *via email*
Duane Allen Swank, Jr. #3011415, Defendant
Hon. Matthew Wald – *via email*
Jay Harris, Esq. – *via email*
Board of Pardons and Parole – *via email*
MSP - Records Dept. – *via email*



Shelly Smith, Office Administrator
Sentence Review Division