

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

STATE OF MONTANA,	)	Cause No. DC-56-2022-0001030-IN
	)	
Plaintiff,	)	Yellowstone County District Court
-vs-	)	
	)	Montana Thirteenth Judicial District
NICHOLAS STEVEN CAPELLA,	)	
	)	<b>DECISION</b>
	)	
Defendant.	)	

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On December 13, 2023, The Defendant was sentenced as follows:

Amended Count I: Eighteen (18) years to the Montana State Prison for the offense of Criminal Possession of Dangerous Drugs with Intent to Distribute, a Felony, in violation of §45-9-103, MCA, to run consecutively to Federal Case CR-23-59-BLG-SPW.

Count II: Three (3) years to the Montana State Prison for the offense of Theft, Obtain Control Over Property Stolen by Another Exceeding \$1500 But Less Than \$5000, 1<sup>st</sup> Offense, a Felony, in violation of §§45-6-301(3) and 45-2-101(8), MCA, to run consecutively to Count I.

Count V: Six (6) months commitment to the Yellowstone County Detention Facility for the offense of Criminal Contempt, a Misdemeanor, in violation of §45-7-309(1)(c), MCA, to run consecutively to Counts I and II.

Count VI: Six (6) months commitment to the Yellowstone County Detention Facility for the offense of Criminal Contempt, a Misdemeanor, in violation of §45-7-309(1)(c), MCA, to run consecutively to Counts I, II, V.

The sentence was ordered to run consecutive to Defendant’s Federal Sentence in CR-23-59-BLG-SPW. The Court further ordered that the Defendant be given credit for time spent in pre-trial incarceration as follows: August 23, 2022 through December 13, 2023. It was ordered that the assets seized from the Defendant in the course of violation of Title 45, Chapter 9, MCA were forfeited as set out in MCA including Title 44, Chapter 12. The specific assets forfeited were as follows: Drugs, \$160 Cash, Firearms.

The Court granted the State’s oral motion to dismiss Counts III and IV.

On August 1, 2024, 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 Tyler Dugger, Defense Counsel. The State was not represented. The Defendant did not give a statement.

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.

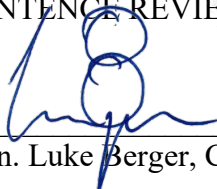
Rule 12, Rules of the Sentence Review Division of the Supreme Court of Montana, provides that, "The sentence imposed by the District Court is presumed correct. The sentence shall not be reduced or increased unless it is clearly inadequate or clearly excessive." (Section 46-18-904(3), MCA).

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.

DATED this 13th day of August, 2024.

SENTENCE REVIEW DIVISION

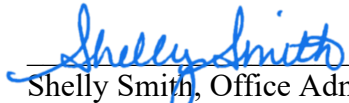
  
\_\_\_\_\_  
Hon. Luke Berger, Chair

  
\_\_\_\_\_  
Hon. Jessica Fehr, Member

  
\_\_\_\_\_  
Hon. Matthew Cuffe, Member

Copies mailed or emailed this 13th day of August, 2024, to:

Clerk of District Court – *via email*  
Nicholas Steven Capella #3035703, Defendant  
Hon. Ashley Harada – *via email*  
Tyler Dugger, Defense Counsel – *via email*  
John Ryan, Deputy Co. Attorney – *via email*  
Board of Pardons and Parole – *via email*  
MSP - Records Dept. – *via email*

  
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Shelly Smith, Office Administrator  
Sentence Review Division