

Sentence Review Division
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FILED

AUG 23 2021

**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-19-272
)
) Plaintiff,) Yellowstone County District Court
)
)
-vs-) Montana Thirteenth Judicial District
)
)
DONALD WILLIAM SMITH,) **DECISION**
)
)
) Defendant.)

On February 10, 2021, the Defendant was sentenced to the Montana State Prison for twenty (20) years, with five (5) years suspended, for the offense of **Count I: Sexual Intercourse Without Consent, a felony, in violation of §§ 45-5-501(b)(vi) and 45-5-503(1), MCA**. The Defendant was designated as a Level I Sexual Offender and was ordered to complete Phase One (1) of the Sexual Offender Treatment Program before becoming parole eligible. The Defendant received credit for time spent in pre-trial incarceration from March 11, 2019 through April 17, 2019. The Court ordered the Defendant pay restitution in the total amount of Fifteen Thousand Four Hundred Fifty-Nine Dollars and Thirty-Nine Cents (\$15,459.39) to Montana Medicaid.

On August 12, 2021, 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 Teal Mittelstadt, Defense Counsel. The State was not represented. Susan Smith, mother of the Defendant, was present and provided 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. 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 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 ²⁰~~17th~~ day of August, 2021.

SENTENCE REVIEW DIVISION



Hon. Luke Berger, Chairperson



Hon. Jessica Fehl, Member



Hon. Dan Wilson, Member

Copies mailed or emailed this 23rd day of August, 2021, to:

- Clerk of District Court – *via email*
- Donald William Smith #3028447, Defendant (2)
- Hon. Ashley Harada – *via email*
- Teal Mittelstadt, Defense Counsel – *via email*
- Jacob Yerger, Esq. – *via email*
- Board of Pardons and Parole – *via email*
- MSP - Records Dept. – *via email*



Shelly Smith, Office Administrator
Sentence Review Division