

Sentence Review Division  
301 S. Park Ave., Suite 328  
P.O. Box 203005  
Helena, MT 59620-3005  
Phone: (406) 841-2976  
Email: [shellysmith@mt.gov](mailto:shellysmith@mt.gov)

**FILED**

**AUG 17 2023**

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-7-2019-0000192-IN  
)  
Plaintiff, ) Cascade County District Court  
)  
-vs- )  
) Montana Eighth Judicial District  
MICHAEL JOSEPH GARDNER, JR., )  
) **DECISION**  
)  
Defendant. )

On December 16, 2022, the Defendant was sentenced as follows: Amended Count I: Thirty (30) years commitment to the Montana State Prison, with twenty (20) years suspended, for the offense of Sexual Assault with Bodily Injury, a Felony, in violation of §45-5-502(3), MCA; and Amended Count II: Thirty (30) years commitment to the Montana State Prison, with twenty (20) years suspended, for the offense of Sexual Assault with Bodily Injury, a Felony, in violation of §45-5-502(3), MCA, to run consecutive to Amended Count I.

The Defendant was ordered to complete Phase I and II of Sex Offender Treatment before he may be eligible for parole. The Court further ordered the Defendant to register as a Sexual Offender. He was given 1,360 days credit for time served prior to sentencing.

On August 3, 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 represented by Kory Larsen. The Defendant gave 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

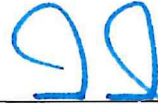
not be reduced or increased unless it is clearly inadequate or clearly excessive." Section 46-18-904(3), MCA.

The Division finds that the sentence imposed by the District Court is clearly excessive in that it imposes a parole restriction based on completion of Phases I and II of sex offender treatment that is no longer offered by the Department of Corrections.

Therefore, it is the unanimous decision of the Division that the sentence shall be **AMENDED** to remove the parole restriction in the underlying judgment. The sentence and judgment instead shall provide that the Defendant shall complete all sex offender programming as recommended by an MSOTA Clinical Member or with a licensed professional with demonstrated equivalencies. The remaining sentence, terms and conditions imposed in the Judgment of December 16, 2022 are not clearly excessive and are affirmed.

DATED this 17<sup>th</sup> day of August, 2023.

SENTENCE REVIEW DIVISION



Hon. Dan Wilson, Chair



Hon. Luke Berger, Member



Hon. Jessica Fehr, Member

Copies mailed or emailed this 17<sup>th</sup> day of August, 2023, to:

Clerk of District Court – *via email*  
Michael Joseph Gardner, Jr. #3033409, Defendant  
Hon. John Parker – *via email*  
David Merchant, Defense Counsel – *via email*  
Joshua Racki, County Attorney – *via email*  
Board of Pardons and Parole – *via email*  
MSP - Records Dept. – *via email*



Shelly Smith, Office Administrator  
Sentence Review Division