

Sentence Review Division
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FILED
DEC 07 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-1-2022-0004096-IN
)
Plaintiff,) Beaverhead County District Court
) Montana Fourth Judicial District
-vs-)
)
KERRY ROGER SEWELL,) **ORDER DENYING APPLICATION FOR**
) **SENTENCE REVIEW**
)
Defendant.)

On November 2, 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 Crossroads Correctional Facility and was represented by Tyler Dugger, Defense Counsel. The State was not represented.

The State's Third Objection to Defendant's Application for Sentence Review Application was filed with the Division on September 26, 2023, on the grounds that the Defendant knowingly and voluntarily waived such right.

The State's Third Objection to Defendant's Application for Sentence Review Application was accompanied by copies of the Information, the Plea Agreement offered October 4, 2022, and the Findings of Fact, Conclusions of Law, Judgment and Order. The plea agreement includes the purported waiver of sentence review at issue.

It is undisputed that the Defendant's plea agreement with the State in the instant case included a written acknowledgment and waiver of his right to sentence review. In exchange for the concessions from the State, the Defendant agreed to waive "any right, as provided in §46-18-903, M.C.A., to make application for sentence review." *Exhibit 2*, p. 2, ¶ D.

The State urges the Sentence Review Division to hold the Defendant to his agreement. The State notes several benefits obtained by the Defendant pursuant to the plea agreement and a sentencing recommendation substantially less than the statutory maximum possible penalties.

The waiver of the right to sentence review was made knowingly and voluntarily and the Defendant is bound by the waiver, along with the waiver of various other rights, which occurred by the District Court's acceptance of the Defendant's plea. It is the Division's unanimous conclusion that the waiver of the right to sentence review is both valid and enforceable. Accordingly, the State's objection to the Defendant's Sentence Review Application is well taken. For these reasons,

IT IS ORDERED that the State's Petition to Deny Defendant's Sentence Review Application is GRANTED, and the Application for Sentence Review is DISMISSED with prejudice.

DATED this 6th day of December, 2023.

FOR THE DIVISION:



Hon. Dan Wilson, Chair
SENTENCE REVIEW DIVISION

Copies mailed or emailed this 7th day of December, 2023, to:

Clerk of District Court – *via email*
Kerry Roger Sewell #3011754, Defendant
Hon. Luke Berger – *via email*
Tyler Dugger, Defense Counsel – *via email*
Jed Fitch, County Attorney – *via email*
Board of Pardons and Parole – *via email*
MSP - Records Dept. – *via email*



Shelly Smith, Office Administrator
Sentence Review Division