

Sentence Review Division  
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**FILED**

**MAY 17 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-16-033
	)	
Plaintiff,	)	Stillwater County District Court
	)	
-vs-	)	Montana Twenty Second Judicial District
	)	
GARY MCCLEERY,	)	
	)	<b>DECISION</b>
	)	
Defendant.	)	

On December 22, 2021, the Court found the Defendant in violation of the conditions of the sentence imposed September 8, 2017, revoked the sentence, and sentenced the Defendant to a commitment to the Department of Corrections for a term of ten (10) years, with four (4) years suspended, for the offense of Count I: Theft, a Felony, in violation of §45-6-301(3)(c), MCA.

The Defendant was ordered to pay a fine of One Thousand Dollars (\$1,000.00) and a surcharge in the amount of Eighty-Five Dollars (\$85.00) to the Stillwater County Clerk of District Court. The Defendant was given credit for street time in the amount of One Thousand Three Hundred Twenty Three (1,323) days (3 years, 7 months, 15 days), and credit for time served in the amount of two hundred fourteen (214) days for the original pre-trial incarceration (154 days) and the pre-disposition incarceration (60 days) toward the sentence imposed.

The Court recommended that the Defendant be screened for appropriate programs to address underlying issues of chemical dependency and criminal thinking.

On May 6, 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 Cascade County Jail and was represented by Sadie Busch, Defense Counsel. The State was not represented. 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 reasons advanced for modification are insufficient to hold that the sentence imposed by the District Court is clearly inadequate or clearly excessive.

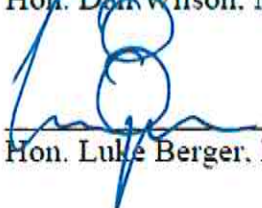
Therefore, it is the unanimous decision of the Division that the sentence is AFFIRMED.

DATED this 17<sup>th</sup> day of May, 2022.

SENTENCE REVIEW DIVISION

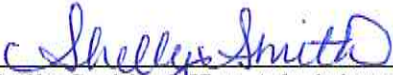
  
\_\_\_\_\_  
Hon. Jessica Fehr, Chair

  
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Hon. Don Wilson, Member

  
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Hon. Luke Berger, Member

Copies mailed or emailed this 18<sup>th</sup> day of May, 2022, to:

- Clerk of District Court – *via email*
- Gary McCleery #3022110, Defendant
- Hon. Matthew Wald – *via email*
- Sadie Busch – *via email*
- Nancy L. Rohde – *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