

Sentence Review Division
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FILED
MAR 16 2020
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-16-444
)
Plaintiff,) Flathead County District Court
) Montana Eleventh Judicial District
-vs-)
) **DECISION**
JUSTIN CHARLES HERNANDEZ,)
)
Defendant.)

On March 8, 2018, the Defendant was sentenced to the Montana State Prison for forty (40) years, with no time suspended, for the offense of Count I: Sexual Assault, a Felony, in violation of §45-5-502(1)[2], MCA. Pursuant to §46-18-202, MCA, the Court ordered the Defendant ineligible for parole and participation in a supervised release program until he has served 15 years of his sentence. The Defendant was designated a Tier 1 Sex Offender and ordered to complete Phases I and II of Sexual Offender treatment. The Defendant was given credit for 33 days served in custody. The Defendant was ordered to pay \$2,083.32 in restitution.

On February 20, 2020, the Defendant's Application for review of that sentence was heard by the Sentence Review Division of the Montana Supreme Court (hereafter "the Division"). The Defendant appeared by video conferencing from the Crossroads Correctional Center and was represented by Lane Bennett, Defense Counsel. The State was not represented.

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 the parole restriction is not supported by the record.

Therefore, it is the unanimous decision of the Division that the sentence shall be **MODIFIED** to remove the parole restriction of fifteen (15) years. The sentence, terms and conditions imposed in the Judgment of March 8, 2018 are not clearly inadequate or clearly excessive and are affirmed.

Done in open Court this 20th day of February, 2020.

DATED this 14 day of March, 2020.

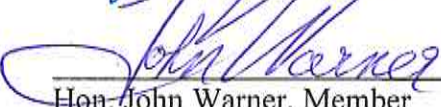
SENTENCE REVIEW DIVISION



Hon. Luke Berger, Sub-Chairperson



Hon. Jessica Fehr, Member



Hon. John Warner, Member

Copies mailed this 16th day of March, 2020, to:

Flathead Co. Clerk of District Court (Original)
Justin Charles Hernandez #3023362, Defendant (2)
Hon. Dan Wilson
Lane Bennett, Defense Counsel
Travis R. Ahner, Esq.
Board of Pardons and Parole
MSP - Records Dept.



Shelly Smith, Office Administrator
Sentence Review Division