

Sentence Review Division
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FILED

OCT 06 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-20-095
)
Plaintiff,) Lincoln County District Court
)
-vs-) Montana Nineteenth Judicial District
)
KIMBERLY DAWN KUSENER,) **DECISION**
)
Defendant.)

On May 17, 2021, the Defendant was sentenced to the Montana Department of Corrections for a period of ten (10) years, with five (5) years suspended, for the offense of **Count I: Criminal Possession of Dangerous Drugs with Intent to Distribute, a felony, in violation of § 45-9-102 MCA**. The Defendant was credited with 114 days as of the date of the Judgment for time served prior to incarceration. On May 27, 2021, the Court dismissed **Count II: Criminal Possession of Drug Paraphernalia, a misdemeanor, in violation of § 45-10-103 MCA**.

On September 24, 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 Women's Prison and was represented by Teal Mittelstadt. 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 she understood this and stated that she 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 6th day of October, 2021.

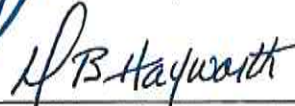
SENTENCE REVIEW DIVISION



Hon. Dan Wilson, Acting Chair



Hon. Jessica Fehr, Member



Hon. Michael B. Hayworth, Substitute Member

Copies mailed or emailed this 6th day of October, 2021, to:

Clerk of District Court – *via email*
Kimberly Dawn Kusener #3030594, Defendant
Hon. Matt Cuffe – *via email*
Teal Mittelstadt, Defense Counsel – *via email*
Jeff Zwang, Esq. – *via email*
Board of Pardons and Parole – *via email*
MWP - Records Dept. – *via email*



Shelly Smith, Office Administrator
Sentence Review Division