

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

FILED
11/29/2021
Sentence Review Division
of the Montana Supreme Court

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA

STATE OF MONTANA,) Cause No. DC-21-081
)
Plaintiff,) Silver Bow County District Court
-vs-)
) Montana Second Judicial District
CODY AARON THOMAS,)
) **DECISION**
Defendant.)
)

On May 17, 2021, the Defendant was sentenced to a commitment of thirteen (13) months to the Montana Department of Corrections, for placement in a residential treatment program, for the offense of Count I: Driving Under the Influence of Drugs 4th or Subsequent Offense, a felony, in violation of §61-8-401, MCA. If he completes the treatment program prior to the 13 months, the balance of the 13 months is suspended. The Defendant was also sentenced to a consecutive term of five (5) years to the Department of Corrections. The sentence was ordered to run concurrent with any sentence previously imposed. The Defendant received credit of 49 days for time served in the Butte-Silver Bow Detention Center. Count II was dismissed.

On November 5, 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 State Prison and was represented by Sadie Busch, Defense Counsel. The State was not represented. The Defendant provided 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 notes there was a conflict in the record in that the Defendant was to receive thirteen (13) months to the Montana Department of Corrections, followed by five (5) years, yet there was no mention of suspension.

The Division concluded the reasons advanced for modification are sufficient to hold that the sentence imposed by the District Court is clearly excessive.

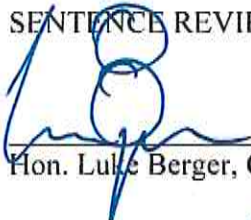
Therefore, it is the unanimous decision of the Division that the sentence be **CLARIFIED** as follows:

A commitment to the Montana Department of Corrections for a term of thirteen (13) months, for placement at the WATCH program, with a consecutive five (5) year **suspended** sentence, for the offense of Count I: Driving Under the Influence of Drugs 4th or Subsequent Offense, a felony, in violation of §61-8-401, MCA. If the Defendant completes the treatment program prior to the 13 months, the balance of the 13 months is suspended. The sentence shall run concurrent with any sentence previously imposed.

The terms and conditions imposed in the Judgment of May 17, 2021, are not clearly excessive and are affirmed.

DATED this 22 day of November, 2021.

SENTENCE REVIEW DIVISION



Hon. Luke Berger, Chair



Hon. Jessica Fehl, Member



Hon. Dan Wilson, Member

Copies mailed or emailed this 29th day of November, 2021, to:

Clerk of District Court – *via email*
Cody Aaron Thomas #3010405, Defendant (2)
Hon. Kurt Krueger – *via email*
Sadie Busch, Defense Counsel – *via email*
Michael Clague, Esq. – *via email*
Board of Pardons and Parole – *via email*
MSP - Records Dept. – *via email*



Shelly Smith, Office Administrator
Sentence Review Division