

Sentence Review Division
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SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA

STATE OF MONTANA,) Cause No. DC-21-343
)
Plaintiff,) Missoula County District Court
)
-vs-) Montana Fourth Judicial District
)
MICHA RAY LOZIER,) **DECISION**
)
Defendant.)

On March 25, 2021, the Defendant was sentenced to eight (8) years to a state prison designated by the Montana Department of Corrections, for the offense of Count I: Escape, a Felony, in violation of § 45-7-306 MCA. The sentence is to be served consecutively to the Defendant's underlying sentence, but concurrently with the sentence in DC-20-096. Restitution was ordered in the amount of \$2,785.45 for costs incurred by the Powell County Sheriff's Office for apprehension efforts.

On February 10, 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 Crossroads Correctional Center and was represented by Sadie Busch, Defense Counsel. The State was represented by Caitlin Creighton.

Ms. Creighton stated her objection to the review of sentence on the basis that the plea agreement in the record indicates that Mr. Lozier, in addition to waiving various other rights in his plea agreement, purportedly waived the right to sentence review. The Sentence Review Judges had a brief recess to confer and reconvened. The Chair ordered that while the panel acknowledged that they have in the past upheld the effect of such a waiver in a plea agreement, in those cases, the objection to sentence review and the application was brought to the Division's attention by way of a pre-hearing motion. The Division believes it appropriate to adopt a rule and a practice that a dispositive motion, in the form of an objection made at the time of the hearing, is inappropriate and that if a motion is to be made to enforce a waiver contained in a plea agreement

that impacts an application's right to sentence review, it must be brought in the form of a timely pre-hearing motion. Therefore, the Division found the objection based on the purported waiver overruled, and any motion made on that objection is denied.

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. The Defendant gave a statement.

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 13 day of February, 2023.


SENTENCE REVIEW DIVISION



Hon. Dan Wilson, Chair



Hon. Luke Bolger, Member



Hon. Jessica Fehr, Member

Copies mailed or emailed this 14th day of February, 2023, to:

Clerk of District Court – *via email*
Micha Ray Lozier #3014732, Defendant
Hon. Leslie Halligan – *via email*
Sadie Busch, Defense Counsel – *via email*
Caitlin Creighton, Esq. – *via email*
Board of Pardons and Parole – *via email*
MSP - Records Dept. – *via email*



Shelly Smith, Office Administrator
Sentence Review Division