

Sentence Review Division
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FILED
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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-39-2011-0000068-IN
)
Plaintiff,) Powell County District Court
)
-vs-)
) Montana Third Judicial District
)
CODY JOSEPH FLESCHE,)
) **DECISION**
)
Defendant.)

On January 31, 2023, the Court found the Defendant violated the terms and conditions of his suspended sentence, revoked the sentence, and resentenced him as follows:

Count I: Ten (10) years commitment to the Department of Corrections, with none of that time suspended, for the offense of Aggravated Assault, a Felony, in violation of §45-5-202, MCA.

Count II: Ten (10) years commitment to the Department of Corrections, with none of that time suspended, for the offense of Aggravated Assault, a Felony, in violation of §45-5-202, MCA.

The sentences were ordered to run concurrent with each other. The Court further ordered that the Defendant be granted 397 days of street time and jail time credit combined. The Court's prior orders as to fees and to the conditions should any portion of the term be served in the community were continued and re-imposed from the original sentence.

On November 2, 2023, 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 David Merchant, Defense Counsel. The State was not represented. The Defendant did not give 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.

The Division notes that while the sentence is neither clearly excessive nor clearly inadequate, the Division requests the Department of Corrections look at the Judgment to ensure that the 397 days credit for time served were properly applied.

DATED this 9th day of November, 2023.

SENTENCE REVIEW DIVISION



Hon. Luke Berger, Chair



Hon. Jessica Fehr, Member



Hon. Matthew Cuffe, Member

Copies mailed or emailed this 12th day of November, 2023, to:

Clerk of District Court – *via email*
Cody Joseph Flesch #3004653, Defendant
Hon. Ray Dayton – *via email*
David Merchant, Defense Counsel – *via email*
Kathryn McEnery, County Attorney – *via email*
Board of Pardons and Parole – *via email*
MSP - Records Dept. – *via email*



Shelly Smith, Office Administrator
Sentence Review Division