

Sentence Review Division
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FILED
04/15/2025
SENTENCE REVIEW DIVISION
OF THE SUPREME COURT
OF THE STATE OF MONTANA

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA

STATE OF MONTANA,) Cause No. DC-35-2023-0000002
)
Plaintiff,) Petroleum County District Court
)
-vs-) Montana Tenth Judicial District
)
BRENDA DENISE BERG,) **DECISION**
)
Defendant.)

On August 14, 2024, the Defendant was sentenced as follows:

Count I: Ten (10) years to the Montana State Women’s Prison for the offense of Elder Exploitation, a Felony, in violation of §45-6-333, MCA.

Count II: Ten (10) years to the Montana State Women’s Prison for the offense of Forgery, a Felony, in violation of §45-6-325, MCA. The sentence was ordered to run *concurrently* with Count I.

Count V: Ten (10) years to the Montana State Women’s Prison for the offense of Elder Exploitation, a Felony, in violation of §45-6-333, MCA. The sentence was ordered to run *concurrently* with Counts I and II.

Count VII: Ten (10) years to the Montana State Women’s Prison for the offense of Forgery Exceeding \$5,000, a Felony, in violation of §45-6-325, MCA. The Court ordered the Defendant to pay restitution of six-thousand six-hundred fifty dollars and forty-three cents (\$6,650.43) to Bank of the Rockies along with the 10% administrative charged by the Department of Corrections. The sentence was ordered to run *concurrently* with Counts I, II, and V.

Count III: Seven (7) years to the Montana State Women’s Prison for the offense of Elder Exploitation, a Felony, in violation of §45-6-333, MCA. The Court ordered the Defendant to pay restitution of four-thousand one-hundred seventy-two dollars and eleven cents (\$4,172.11) to Denise Manley, along with the 10% administrative fee charged by the Department of Corrections. The sentence was ordered to run *consecutively* to Counts I, II, V, and VII.

Count VI: Seven (7) years to the Montana State Women’s Prison for the offense of Deceptive Practices Over \$5,000, a Felony, in violation of §45-6-317, MCA. The Court ordered the Defendant to pay restitution of six-thousand six-hundred fifty dollars and forty-three cents (\$6,650.43) to the Bank of the Rockies, along with the 10% administrative fee charged by the Department of Corrections. The restitution was ordered to run **concurrently** with the restitution ordered for Count VII, so the Defendant owed \$6,650.43 total to Bank of the Rockies, and the admin fee should not be duplicated. The sentence was ordered to run **concurrently** with Count III, and **consecutively** to Counts I, II, V, and VII.

The Defendant was given credit for three-hundred-and-thirty (330) days of jail time served as of the date of sentencing for each count. The Defendant was ordered ineligible for parole for a period of twelve (12) years. The Court dismissed Count IV with prejudice. The restitution 10% administrative fee to be paid was as follows: \$417.21 for D. Manley; and \$665.04 for Bank of the Rockies, with a total 10% restitution fee of \$1,082.25. The Court ordered the Defendant to not knowingly have any contact with, D.M. or BOR, the victims and/or victims’ immediate family.

Lastly, the Court ordered the sentence imposed in the matter to run **concurrently** with Defendant’s sentence in Custer County Cause No. DC-2023-025. Otherwise, the sentence shall run **consecutively** to any other sentence previously imposed by any other court, including but not limited to State, Federal, or Tribal jurisdictions.

On April 4, 2025, 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 Tyler Dugger, Defense Counsel. The State was represented by Ally Haegele, Law Clinic Student, under the supervision of Michael Fanning, Special Deputy County Attorney. 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 she understood this and stated that she wished to proceed.

The State asked the Division to dismiss the Defendant’s request for sentence review based on the Sentence Review Division waiver contained in her original plea agreement. It is worth noting that the District Court did not follow the plea agreement terms that contained the waiver. Mr. Dugger addressed the Division regarding the Waiver of Right to Review of Sentence in the plea agreement that the Defendant agreed to waive her right to sentence review without knowing what the outcome of the sentence would be at the time of sentencing. Mr. Dugger requested the State’s Waiver be set aside and the Defendant be allowed to pursue the right for review of sentence.

The Division finds that the Waiver of Sentence Review that existed in Defendant’s Plea Agreement was not made knowingly, given the uncertainties in the actual sentence that would be

imposed and given that the District Court did not follow the recommendations contained in the plea agreement. The Division therefore finds that the Sentence Review Division waiver is invalid. The Division granted Defense Counsel's request to set aside the Sentence Review Division waiver and proceeded with the hearing. The Defendant gave a statement.

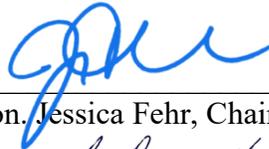
Rule 12, Rules of the Sentence Review Division of the Supreme Court of Montana, provides that, "The sentence imposed by the District Court is presumed correct. The sentence shall not be reduced or increased unless it is clearly inadequate or clearly excessive." (Section 46-18-904(3), MCA).

The District Court's judgment outlines specific reasons for the sentence imposed. 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 15th day of April, 2025.

SENTENCE REVIEW DIVISION



Hon. Jessica Fehr, Chair



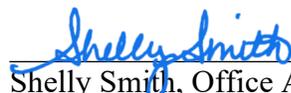
Hon. Matthew Cuffe, Member



Hon. Christopher Abbott, Member

Copies mailed or emailed this 15th day of April, 2025, to:

Clerk of District Court – *via email*
Brenda Denise Berg #42388, Defendant
Hon. Heather Perry – *via email*
Tyler Dugger, Defense Counsel – *via email*
State Office of the Public Defender
Diane Cochran, Deputy Co. Attorney – *via email*
Board of Pardons and Parole – *via email*
MWP - Records Dept. – *via email*



Shelly Smith, Office Administrator
Sentence Review Division