

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-19-084
)	
Plaintiff,)	Richland County District Court
)	
-vs-)	Montana Seventh Judicial District
)	
MCKENZIE ADAM BERGERSON,)	DECISION
)	
Defendant.)	

On July 27, 2020, the Defendant was sentenced as follows:

Count I: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Criminal Possession of Dangerous Drugs – Heroin, a Felony, in violation of §45-9-102, MCA;

Count II: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Criminal Possession of Dangerous Drugs – Cocaine, a Felony, in violation of §45-9-102, MCA. *Count II was ordered to run consecutively to Count I.*

Count III: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Criminal Possession of Dangerous Drugs – Methamphetamine, a Felony, in violation of §45-9-102, MCA. *Count III was ordered to run consecutively to Count II.*

Count IV: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Criminal Possession of Dangerous Drugs – LSD, a Felony, in violation of §45-9-102, MCA. *Count IV was ordered to run consecutively to Count III.*

Count V: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Criminal Possession of Dangerous Drugs – THC Oil Greater than 1 Gram, a Felony, in violation of §45-9-102, MCA. *Count V was ordered to run consecutively to Count IV.*

Count VI: Ten (10) year commitment to the Montana State Prison, none suspended, for the offense of Use or Possession of Property Subject to Criminal Forfeiture, a Felony in violation of §45-9-206, MCA. *Count VI was ordered to run consecutively to Count V.*

Count VII: Ten (10) year commitment to the Montana State Prison, none suspended, for the offense of Use or Possession of Property Subject to Criminal Forfeiture, a Felony in violation of §45-9-206, MCA. *Count VII was ordered to run consecutively to Count VI.*

Count VIII: Ten (10) year commitment to the Montana State Prison, none suspended, for the offense of Use or Possession of Property Subject to Criminal Forfeiture, a Felony in violation of §45-9-206, MCA. *Count VIII was ordered to run concurrently with Count VII.*

Count IX: Ten (10) year commitment to the Montana State Prison, none suspended, for the offense of Use or Possession of Property Subject to Criminal Forfeiture, a Felony in violation of §45-9-206, MCA. *Count IX was ordered to run concurrently with Count VIII.*

Count X: Ten (10) year commitment to the Montana State Prison, none suspended, for the offense of Use or Possession of Property Subject to Criminal Forfeiture, a Felony in violation of §45-9-206, MCA. *Count X was ordered to run concurrently with Count IX.*

Count XI: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Sawed-Off Firearm (Rifle or Shotgun) – (first offense), a Felony, in violation of §45-8-340, MCA. *Count XI was ordered to run consecutively to Count X.*

Count XII: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Sawed-Off Firearm (Rifle or Shotgun) – (first offense), a Felony, in violation of §45-8-340, MCA. *Count XII was ordered to run consecutively to Count XI.*

Count XIII: Six (6) month commitment to the Richland County Detention Center, none suspended, for the offense of Criminal Possession of Drug Paraphernalia, a Misdemeanor, in violation of §45-10-103, MCA. *Count XIII was ordered to run concurrently with Count XII.*

Count XIV: One (1) year commitment to the Richland County Detention Center, none suspended, for the offense of Criminal Possession of Dangerous Drugs – Marijuana (60 grams or less) (third or subsequent), a Misdemeanor, in violation of §45-9-102, MCA. *Count XIV was ordered to run concurrently with Count XIII.*

It was ordered that the sentences would run consecutively to the sentences imposed in Cause Nos. DC-12-47 and DC-16-130, Montana Seventh Judicial Court, Richland County. The Defendant received credit for two hundred eighty-nine (289) days service in jail against his sentence.

On February 4, 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 David Maldonado, Defense Counsel. The State was not represented.

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).

It is the unanimous decision of the Division that the sentence imposed is clearly excessive. The Division's decision is to amend the Judgment to **DECREASE the sentence as follows:**

Count I: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Criminal Possession of Dangerous Drugs – Heroin, a Felony, in violation of §45-9-102, MCA;

Count II: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Criminal Possession of Dangerous Drugs – Cocaine, a Felony, in violation of §45-9-102, MCA.

Count III: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Criminal Possession of Dangerous Drugs – Methamphetamine, a Felony, in violation of §45-9-102, MCA.

Count IV: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Criminal Possession of Dangerous Drugs – LSD, a Felony, in violation of §45-9-102, MCA.

Count V: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Criminal Possession of Dangerous Drugs – THC Oil Greater than 1 Gram, a Felony, in violation of §45-9-102, MCA.

The sentences on Counts I - V shall run concurrently with each other.

Count VI: Ten (10) year commitment to the Montana State Prison, none suspended, for the offense of Use or Possession of Property Subject to Criminal Forfeiture, a Felony in violation of §45-9-206, MCA.

Count VII: Ten (10) year commitment to the Montana State Prison, none suspended, for the offense of Use or Possession of Property Subject to Criminal Forfeiture, a Felony in violation of §45-9-206, MCA.

Count VIII: Ten (10) year commitment to the Montana State Prison, none suspended, for the offense of Use or Possession of Property Subject to Criminal Forfeiture, a Felony in violation of §45-9-206, MCA.

Count IX: Ten (10) year commitment to the Montana State Prison, none suspended, for the offense of Use or Possession of Property Subject to Criminal Forfeiture, a Felony in violation of §45-9-206, MCA.

Count X: Ten (10) year commitment to the Montana State Prison, none suspended, for the offense of Use or Possession of Property Subject to Criminal Forfeiture, a Felony in violation of §45-9-206, MCA.

The sentences on Counts VI - X shall run concurrently with each other, and consecutively to the sentences on Counts I – V.

Count XI: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Sawed-Off Firearm (Rifle or Shotgun) – (first offense), a Felony, in violation of §45-8-340, MCA.

The sentence on Count XI shall run consecutively to the sentences on Counts I - V and Counts VI – X.

Count XII: Five (5) year commitment to the Montana State Prison, none suspended, for the offense of Sawed-Off Firearm (Rifle or Shotgun) – (first offense), a Felony, in violation of §45-8-340, MCA.

The sentence on Count XII shall run consecutively to the sentences on Counts I – V, Counts VI – X, and Count XI.

Count XIII: Six (6) month commitment to the Richland County Detention Center, none suspended, for the offense of Criminal Possession of Drug Paraphernalia, a Misdemeanor, in violation of §45-10-103, MCA.

Count XIV: One (1) year commitment to the Richland County Detention Center, none suspended, for the offense of Criminal Possession of Dangerous Drugs – Marijuana (60 grams or less) (third or subsequent), a Misdemeanor, in violation of §45-9-102, MCA.

The sentences on Counts XIII and XIV shall run concurrently with the sentence on Count XII.

In all other aspects, the Judgment of the District Court dated August 13, 2020 is affirmed.

DATED this 8th day of February, 2021.

SENTENCE REVIEW DIVISION



Hon., Luke Berger Chairperson



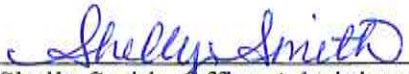
Hon. Jessica Fehr, Member



Hon. Dan Wilson, Member

Copies mailed or emailed this 9th day of February, 2021, to:

- Clerk of District Court – *via email*
- McKenzie Adam Bergerson #3011614, Defendant (2)
- Hon. Katherine Bidegaray – *via email*
- David Maldonado, Defense Counsel – *via email*
- Janet P. Christofferson, Esq. – *via email*
- Board of Pardons and Parole – *via email*
- MSP - Records Dept. – *via email*



Shelly Smith, Office Administrator
Sentence Review Division