

MONTANA SUPREME COURT, SENTENCE REVIEW DIVISION

State v. Don Benton

377 Mont. 1 (2014) · Decided March 31, 2014

OPINION

PER CURIAM.

On October 8,2009, the Defendant sentenced for Accountability for Theft, Count I, a felony, in violation of Sections 45-2-301 and 45-6-301(1)(a), MCA the Court defers imposition of the sentence for a period of Three (3) years on the conditions stated in the Judgment; for Accountability for Theft, Count II, a felony, in violation of Sections 45-2-301 and 45-6-301(1)(a), MCA, the Court defers imposition of the sentence for a period of Three (3) years on the conditions stated in the Judgment, this sentence shall run concurrent with the sentence in Count I; for Criminal Mischief, Count I, a felony, in violation of Section 45-6-101(1)(a), MCA the Court defers imposition of the sentence for a period of Three (3) years on the conditions stated in the Judgment, this sentence shall run consecutively to the sentences in Charges 1 and 2 above; and for Criminal Mischief, Count II, a felony, in violation of Section 45-6-101(IXa), MCA the Court defers imposition of the sentence for a period of Three (3) yearn on the conditions stated in the Judgment, this sentence shall run concurrent with the sentence in Charge 3 above and consecutively to the sentences in Charges 1 and 2 above; and other terms and conditions given in the Judgment on October 8,2009.

[Amended Judgment on October 19,2009, amended conditions of probation supervision.] On November 14,2013, the deferred imposition of sentences on Charges #l-#4 were revoked. The Defendant was sentenced for Accountability for Theft, Count I, a felony, in violation of Sections 45-2-301 and 45-6-301(1)(a), MCA to the Montana Department of Corrections for Seven (7) years, with Two (2) years suspended; for Accountability for Theft, Count II, a felony, in violation of Sections 45-2-301 and 45-6-301(1)(a), MCA, to the Montana Department of Corrections for Seven (7) years, with Two (2) years suspended, this sentence shall ran concurrently with the sentence in Count I above; for Criminal Mischief, Count I, a felony, in violation of Section 45-6-101(1)(a), MCA to the Montana Department of Corrections for Seven (7) years, with Two (2) years suspended, this sentence shall ran concurrently to the sentences in Charges 1 and 2 above; and for Criminal Mischief, Count n, a felony, in violation of Section 45-6-101(1)(a), MCA to the Montana Department of Corrections for Seven (7) years, with Two (2) years suspended, this sentence shall run concurrently with the sentence in Charges 1,2 and 3 above; and other terms and conditions given in the Judgment of Revocation of Deferred Sentence on November 14, 2013.

*2DATED this 31st day of March, 2014.

On February 27, 2014, the Defendant's Application for review of that sentence was heard by the Sentence Review Division of the Montana Supreme Court (hereafter "the Division"). The Defendant was present by Vision Net from the Silver Bow County Courthouse in Butte, Montana.

The Defendant was represented by Ed Sheehy, Jr., Montana Office of Public Defender. 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). 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 shall be **AFFIRMED**. Done in open Court this 27th day of February, 2014. Chairperson, Hon. Brad Newman, Member Hon. Kathy Seeley and Member Hon. Brenda Gilbert.