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IN THE SUPREME COURT OF THE STATE OF MONTANA

STATE OF MONTANA,

Plaintiff/Appellee

-VS-

JAMES SCOTT MORRISON,

Defendant/Appellant

TRANSCRIPT ON APPEAL

SENTENCING HEARING

APPEAL FROM

THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF CASCADE

THE HONORABLE DIRK M. SANDEFUR PRESIDING

Transcript Prepared By: Sandra M. Francetich
Official Court Reporter

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MONTANA EIGHTH JUDICIAL DISTRICT,
CASCADE COUNTY

STATE OF MONTANA,)	
)	
Plaintiff,)	BEFORE THE
)	HONORABLE DIRK SANDEFUR
-VS-)	
)	
JAMES SCOTT MORRISON,)	CAUSE NO. ADC-08-299(d)
)	
Defendant.)	

SENTENCING HEARING

Cascade County Courthouse
Great Falls, Montana

JANUARY 29, 2009

APPEARANCES:

ON BEHALF OF PLAINTIFF:

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ON BEHALF OF DEFENDANT:

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1 THE COURT: State versus James Morrison;
2 ADC-08-299(d). This is the time set for
3 Sentencing Hearing. Mr. Morrison is present with
4 Counsel, Jeff Olson. State is represented by
5 Deputy County Attorney Joel Thompson.

6 And as a preliminary matter, Mr. Olson, on
7 behalf of Mr. Morrison, filed a motion to continue the
8 Sentencing Hearing that the Court received at Chambers
9 on the 28th of January, which was yesterday. And so,
10 ostensibly, this was filed yesterday as well. The
11 motion represents that Mr. Olson did not receive the
12 PSI report until the 27th of January, the day before,
13 and requests additional time to obtain a trial
14 transcript to conduct additional investigation to refute
15 portions of the Presentence Investigation Report that
16 the Defendant believes are not accurate.

17 The State -- Mr. Olson's motion represents
18 that the State objected to the motion. And Mr. Olson,
19 from the Court's perspective, as a preliminary matter
20 anyway, your motion does not specify precisely what the
21 dispute is and I'm not inclined to continue the hearing,
22 absent some showing of compelling cause here. So, what
23 is the issue?

24 MR. OLSON: Your Honor, the issue is
25 in -- first, I may have received the PSI on the

1 afternoon of the 26th, actually, it was the 26th or the
2 27th; it was this week, as soon as I had a chance to get
3 up to the jail to discuss it with Mr. Morrison. The
4 issue we had, Your Honor, is that portions of the
5 Presentence Report are incorrect.

6 THE COURT: Which portions?

7 MR. OLSON: The circumstances of the offense
8 portion, which is very important to Mr. Morrison, it's
9 always been important to him. The circumstances of the
10 offense is taken straight out, verbatim, from the
11 original affidavit in this case.

12 And the biggest problem Mr. Morrison had
13 from the start was that he maintained his innocence on
14 the Aggravated Burglary, which is the most serious
15 Offense that was charged. That one was later dismissed
16 by the State, before trial. And this case went to
17 trial, in large part, Your Honor, to clarify that record
18 because Mr. Morrison wanted the Court to know what the
19 circumstances were, that it is not -- the facts are not
20 as bad as they looked on paper in the charging
21 documents.

22 And he also didn't want to be haunted by a
23 presentence report or charging documents in the future,
24 for Department of Corrections purposes. So, he wanted
25 to clarify that. And in large part, that's why we went

1 to trial.

2 Also, there's an issue with criminal
3 history; he disputes some of that. He doesn't recognize
4 some of the offenses.

5 THE COURT: Well, let's take these things
6 one at a time. As to the description of the
7 circumstances of the offense in the presentence
8 investigation report, it appears to me that the PSI
9 accurately summarizes or paraphrases the information
10 that was set forth in the information, as far as it
11 goes.

12 Now, the Court is fully aware, in fact, that
13 there was a jury trial in this case, and the
14 trial -- bench trial, excuse me, and that the trial
15 evidence speaks for itself. And in fact, the Court,
16 because of the fact that it was a bench trial, was
17 acutely aware of what the evidence was at trial.

18 And so, I think that we need, for sentencing
19 purposes anyway, to have a transcript to attempt to
20 review or resummarize what the trial evidence was,
21 unless there's some other reason for this. And I don't
22 understand -- I'm not disputing it, but I don't
23 understand what your concern is about, as far as DOC's
24 future disposition towards Mr. Morrison might be, based
25 upon the description of the circumstances of the offense

1 in the PSI.

2 MR. OLSON: Your Honor, my answer to that is
3 that it's evident that these presentence reports that
4 follow Defendants along, and in this presentence report,
5 a significant portion is taken verbatim out of a prior
6 presentence report. So, it certainly could have
7 consequences in the future. And I believe that -- I
8 think we all understand that Mr. Morrison is going to be
9 going to prison for some time in this case. Parole
10 eligibility is something that he is concerned about and
11 I don't think the Department of Corrections uses the
12 presentence reports and the facts as presented in the
13 PSI in determining parole eligibility. So, I think
14 that's a significant concern, above and beyond just what
15 sentence is imposed here today. So, what I --

16 THE COURT: They can't do that, contrary to
17 what the verdict in the case was.

18 MR. OLSON: Well, I'm concerned; I think
19 they could. Several years down the road, they may not
20 be talking to witnesses from the case, they may simply
21 be going to the quickest resource they have, assuming
22 that it's accurate; in this case, it clearly is not.
23 The circumstance of the offense that are printed in the
24 PSI are clearly not the facts that came before the
25 Court.

1 THE COURT: Well, I don't have a problem, as
2 a matter of record, striking the circumstances of the
3 offense description from the PSI, in light of the fact
4 that, as a matter of statutory law, the sole purpose of
5 the PSI is to provide information to the Court at
6 sentencing; and in light of the fact that the
7 circumstances represent the circumstances as alleged in
8 the supporting affidavit and do not reflect the verdict
9 of the Court.

10 But beyond that, I don't think that anything
11 else is necessary for us to move forward here today and
12 if you do, please tell me why.

13 MR. OLSON: Well, again, these are concerns
14 to Mr. Morrison. These are the sorts of things that he
15 had hoped to avoid. He could have made this case a lot
16 more problematic for everyone involved if he had drawn
17 this out into a jury trial.

18 THE COURT: Well, let me say this, though,
19 Mr. Olson. He has avoided this problem because he was
20 found guilty of the subject offenses on the trial
21 evidence, not on -- and he'll be sentenced accordingly
22 on the trial evidence and the verdict, not on the
23 additional facts or contrary facts set forth in the PSI
24 description of the circumstances of the offense. And
25 if, as a matter of record in the sentencing order, that

1 description is stricken from the PSI, under the
2 circumstances or as I've indicated here perviously, I
3 don't see that there's any remote issue here.

4 MR. OLSON: Okay. Well, Your Honor, my
5 position was that the reason I filed the motion to
6 continue was to get the trial transcripts to refute the
7 allegations in the PSI. And then, to file a motion to
8 have that stricken from the PSI or have the PSI amended
9 to accurately reflect what happened at trial. I think
10 as a matter of Mr. Morrison's due process rights, he
11 does have the -- should have the right to refute the
12 allegations in the PSI, but ultimately, I'm going to be
13 requesting they be stricken from the PSI.

14 THE COURT: All right. Well, the motion for
15 a continuance, then, to obtain a trial transcript and to
16 prepare and conduct further proceedings, in whatever
17 fashion that you contemplate to, as you say, refute the
18 description of the circumstances of the offense in the
19 PSI, is hereby, respectfully denied on the grounds that
20 the trial transcript and the trial verdict speak for
21 themselves. And those are the sole bases of the Court's
22 sentencing considerations as it relates to the
23 circumstances of the offense.

24 Accordingly, because the circumstances of
25 the offense description in the PSI, reflects the facts

1 as alleged in the supporting affidavit and did not
2 reflect the trial evidence. The circumstances of the
3 offense portion of the PSI set forth on page five and
4 the top of page six of the PSI are hereby stricken. And
5 in lieu of that information, the Court hereby takes
6 judicial notice of the trial evidence and verdict. So,
7 that resolves that issue.

8 You said there was some discrepancy here or
9 asserted discrepancy in regard to his criminal history,
10 and what is that?

11 MR. OLSON: That's correct, Your Honor. And
12 granted the criminal history is lengthy here, but when I
13 spoke with him a couple of days ago, he, Mr. Morrison,
14 did not recognize some of the offenses.

15 THE COURT: Let me ask you this, to try to
16 cut to what I think is important here. As a threshold
17 matter, what his criminal record is or is not is a
18 matter of record with the Department of Justice. Those
19 are the -- that's the official record of what his
20 conviction record is. And so, to the extent that
21 there's any discrepancy between that and the PSI, I
22 don't see that as a substantive problem.

23 But beyond that, the most significant aspect
24 of his criminal record is the indication, as noted in
25 the evaluation recommendation portion of the PSI, that

1 this conviction of Partner Family Member Assault is his
2 sixth conviction for that offense. To me, that's what
3 important about his criminal history and the rest of it
4 is there and indicates that there are other issues, but
5 the primary consideration for the Court is that this is
6 his sixth offense of Partner Family Member Assault.

7 So, with that focus, tell me what the
8 problem is with the criminal history record as listed in
9 the PSI.

10 MR. OLSON: Well, in my experience,
11 Your Honor, sometimes what the Department of Justice
12 claims is someone's criminal record is incorrect, that
13 they can have dispositions that were never imposed.
14 They could have people mistaken, names could be
15 mistaken, someone could use someone else's name, that
16 that certainly could happened. So, that's the concern.
17 Mr. Morrison has asked that I check into that. There
18 were a number of cases --

19 THE COURT: Well, let's go through this.
20 Tell me right now so we know what we're talking about:
21 Which of these prior offenses and convictions does
22 Mr. Morrison dispute or question?

23 MR. OLSON: He does not recall ever having a
24 disposition on a domestic battery.

25 THE COURT: Well, give me the date so I can

1 track down on this list.

2 MR. OLSON: July 18th of 1996 in
3 Reno, Nevada.

4 THE COURT: Okay.

5 MR. OLSON: He does not recall a disposition
6 on a case that charged petty larceny, a misdemeanor, and
7 battery on a police officer on April 1st of 1998 in
8 Reno, Nevada.

9 THE COURT: Okay.

10 MR. OLSON: He did not recognize some of the
11 following offenses at the bottom of page -- I believe
12 that he would have been incarcerated during the periods
13 where he supposedly would have been convicted on some of
14 these new offenses. Such as, a theft conviction,
15 misdemeanor.

16 THE COURT: What date?

17 MR. OLSON: February 26th of 1999.

18 THE COURT: All right. What else?

19 MR. OLSON: He doesn't recognize the case in
20 April 24th of 2001 out of Reno, Nevada, for which he was
21 charged with robbery, petty larceny, and battery.

22 THE COURT: All right.

23 MR. OLSON: And he was -- it says he was
24 convicted of operating a motor vehicle without insurance
25 in Yellowstone County, Montana, in October 1st of 2004.

1 He tells me he's never been to Yellowstone County; he
2 doesn't recognize that.

3 THE COURT: All right. Well, my view on
4 this is that the fact that he doesn't recall or
5 recognize these offenses, in all respect, hardly a basis
6 upon which the Court can reasonably suspect that they're
7 inaccurate.

8 And Ms. Carroll, Susan Carroll, for the
9 record, from the Adult Probation and Parole Division of
10 the Department of Corrections, who is the author of the
11 PSI, is present here today and certainly can be sworn
12 and give testimony as to where this information came
13 from. And, if, after -- if you want to go down that
14 road, I'll allow you to do that right now. And if,
15 after hearing Ms. Carroll's testimony, there's reason to
16 believe that there may be a discrepancy here that
17 warrants continuing this hearing, then I will consider
18 that. But until after I've heard from Ms. Carroll on
19 that point, as to what the source of this information is
20 and any responses she has to these alleged
21 discrepancies, I don't have any basis here to continue
22 this hearing today.

23 So, the question to you, then, is: Is do
24 you want to hear from Ms. Carroll and see what the basis
25 is, as a threshold matter, or do you want to proceed?

1 MR. OLSON: Let's proceed, Your Honor.

2 THE COURT: Okay. All right, so with that
3 out of the way, is there any other issue regarding the
4 facts set forth in the PSI?

5 MR. OLSON: No, Your Honor.

6 THE COURT: Okay. All right, so then for
7 those reasons, the motion is denied for a continuance.

8 Mr. Thompson, does the State have any
9 witness for sentencing?

10 MR. THOMPSON: As a preliminary matter,
11 Your Honor, the law requires that we address the issue
12 of Persistent Felony Offender before we proceed into
13 sentencing. So, at this time, I would move the Court,
14 pursuant to the State's notice and is also heavily
15 documented in the Presentence Investigation that this
16 Defendant was in custody as of less than three months
17 from the commission of this offense. The State has
18 shown and given proper notice of Persistent Felony
19 Offender status and we'd ask the Court to make that
20 finding.

21 THE COURT: All right. The Court file
22 indicates that the State filed a notice of intent to
23 seek treatment of the Defendant as a Persistent Felony
24 Offender under the notice filed as Document 16, on
25 September 11th, 2008. And then, Document 17, filed

1 September 19th, 2008, is a Cascade County Sheriff's
2 Office Return of Service or Certificate of Service
3 documenting that the sheriff served a copy of the Notice
4 of Intent on the Defendant, personally, by service upon
5 Counsel, Mr. Olson, again, on September 18th, 2008.

6 Mr. Olson, does the Defendant dispute that
7 he is a Persistent Felony Offender, as defined by
8 46-18-501, MCA?

9 MR. OLSON: No, Your Honor, I believe the
10 State has met it's requirements in regards to the notice
11 provisions and the fact that he is within the five years
12 window of that felony conviction.

13 THE COURT: All right. So, just so the
14 record is clear, there's no dispute, as either to the
15 substantive basis for the State's notice under
16 46-18-501. And there's also no dispute, as to the
17 State's procedural compliance with the notice and
18 related conditions under Title 46, Chapter 18, Part 5;
19 is that correct?

20 MR. OLSON: That's correct.

21 THE COURT: All right.

22 Mr. Thompson, does the State wish to be
23 heard further, prior to the Court rendering judgment on
24 that?

25 MR. THOMPSON: No, Your Honor.

1 A. Yep.

2 Q. Okay. Ms. Morrison, are you aware that Jim was
3 originally charged with Aggravated Burglary?

4 A. Yes.

5 Q. And that was based upon allegations that the
6 police attributed to being made by you?

7 A. Yes, but that was -- we did that in the trial.
8 That was a misunderstanding. I never said he didn't
9 live there.

10 Q. Okay.

11 A. I just said he had been previously jailed and
12 didn't live there, but I never said he didn't live there
13 then.

14 Q. Okay. So, when this altercation occurred, Jim
15 didn't force his way into the house?

16 A. No.

17 Q. He was in there with your permission?

18 A. That's right, yeah.

19 Q. He was staying with you?

20 A. Yep.

21 Q. And the allegation in the affidavit that -- made
22 it appear that this was a surprise confrontation with
23 Jim; that's not correct either, is it?

24 A. No.

25 Q. Because you -- the two of you had spent the day

1 together, correct?

2 A. Yeah, I mean, yeah and his son, yeah.

3 Q. And you had been drinking together earlier in the
4 day?

5 A. Yeah.

6 Q. Okay.

7 A. Before that, yep.

8 Q. Okay. And you clarified that at the trial,
9 correct?

10 A. Uh-huh.

11 Q. Okay.

12 A. I believe so.

13 Q. And so, would it be fair to summarize what you
14 said at trial is that, the two of you had been drinking
15 together earlier in the day?

16 A. Yep.

17 Q. You got into an argument and decided to go home.

18 A. Yep.

19 Q. And when you got home, Jim came into the house
20 with your permission, correct?

21 A. Yes, sir. Yep.

22 Q. Because that's where he was going be staying?

23 A. Yep.

24 Q. And you took your son to the neighbor's house?

25 A. After it all started, right, right.

1 Q. And then you came back --

2 A. Not immediately.

3 Q. Okay. And you came back after you took your son
4 to the neighbors?

5 A. Yes.

6 Q. Came back into the home?

7 A. Yep.

8 Q. Jim was already there in the home?

9 A. Yeah.

10 Q. And at that point, he grabbed you by the neck and
11 he held you down?

12 A. Right.

13 Q. And then, the neighbor, Randall Denney, pulled
14 him off of you?

15 A. Yes.

16 Q. Is that a fair synopsis of what happened?

17 A. Yes, sir.

18 Q. Okay. And did you suffer any serious physical
19 injury?

20 A. No.

21 Q. Okay. And after the trial, do you recall going
22 downstairs to my office where we had a talk about the
23 case?

24 A. Yep.

25 Q. And we talked about what you might recommend for

1 a sentence, correct?

2 A. Right.

3 Q. And what is your recommendation?

4 A. Whatever the minimum is.

5 Q. You want to see the minimum sentence imposed?

6 A. Yes, I do.

7 Q. Okay. And if I were to tell you that the minimum
8 sentence was five years in prison, is that what you
9 would request that the Judge do?

10 A. Personally no, but, you know, that's me, I'm his
11 wife. So, no I don't want it to be five years, neither
12 does his son. But, you know, he's a great guy, he just
13 has a drinking problem. But the real Jim Morrison,
14 without the alcohol, is the most beautiful person you'd
15 ever meet. It's just that the alcohol gets in the way.
16 His son will say that; I'll say that; anybody that knows
17 him will say that.

18 Q. When he's not drinking, does he --

19 A. Yes, we've had our problems but when he's not
20 drinking, he's like an angel.

21 Q. Is he a good father when he's not drinking?

22 A. Yes, he is. And a good husband and a good
23 everything. It's just the alcohol that screws
24 everything up.

25 Q. And is it correct that you wish he didn't have to

1 do five years in prison?

2 A. Yep.

3 MR. OLSON: That's all I have. Thank you.

4 THE COURT: Mr. Thompson.

5 Just a minute, ma'am.

6 THE WITNESS: I want out of here.

7

8 CROSS EXAMINATION

9 BY MR. THOMPSON:

10 Q. Now, Cassie, despite, you know, the fact that you
11 were cooperative in the case and you testified at trial,
12 you're still -- you expressed to me, even in the hallway
13 outside of the courtroom, that you're still tremendously
14 attracted to your husband; is that correct?

15 A. Yeah, yeah, of course, I am.

16 Q. Okay. Now, you did give a written statement on
17 the night of the events, correct?

18 A. On the what?

19 Q. On the night that the offense took place?

20 A. On the day of the -- yeah, I believe so.

21 Q. And you stated that the Defendant followed you
22 home, came in, and you tried to lock the door, but he
23 came in before you got the chance to lock it?

24 A. That was the second time.

25 Q. Okay.

1 A. That was the second time.

2 Q. He got my son in the corner, behind the door, and
3 called him a pussy and told him he was going spank him
4 and then come back and kill him; is that right?

5 A. Yeah.

6 Q. And that's what happened?

7 A. Yeah.

8 Q. Tonya, my next door neighbor, knocked on the
9 door, she said are you okay. You said, yes, through the
10 window, but shook my head.

11 A. Shook my head, no, probably.

12 Q. Then went out, told her I was in trouble, and
13 then came back in; is that right?

14 A. Yes.

15 Q. All right. Now, Cassie, this is not --

16 A. But see, I let him in the first time, that was
17 the second time.

18 Q. Fair enough. And you understand that the
19 Aggravated Burglary charge was dismissed prior to trial,
20 correct?

21 A. Yeah.

22 Q. Okay. So, he's only being sentenced here today
23 on the Partner Family Member Assault, which is -- should
24 have an "F" next to you, but in the PSI it has "M.S."
25 to it, it's a misdemeanor for this offense?

1 A. Yes, I believe I'm aware of that.

2 THE COURT: Say that again.

3 MR. THOMPSON: I just noted under the PSI in
4 this case, there's a misdemeanor indication of the
5 Partner Family Member Assault in this case. So, I guess
6 that needs to be corrected. It should have an "F" next
7 to it, obviously.

8 BY MR. THOMPSON:

9 Q. This is not the first time that the Defendant has
10 been for convicted for assaulting you; is that correct?

11 A. Correct.

12 Q. And in fact, he was in prison for less
13 than -- was out of prison for less than three months
14 before this incident took place?

15 A. Yes.

16 Q. All right.

17 MR. THOMPSON: That's all the questions I
18 have. Thank you.

19 THE WITNESS: I've got a question.

20 THE COURT: Just a minute.

21 Mr. Olson.

22

23 REDIRECT EXAMINATION

24 BY MR. OLSON:

25 Q. Cassie, when we were visiting outside the

1 courtroom here this morning, we talked about the
2 statements that you -- the police attribute to you the
3 day of the offense. Do you recall discussing that with
4 me?

5 A. Uh-huh.

6 Q. And isn't it true that you told me that some of
7 the statements that were made that day might not have
8 been correct, but you --

9 A. Yes, because drinking was involved.

10 Q. You were under the influence of alcohol?

11 A. Yeah, you know.

12 Q. And so, do you -- is it possible that the
13 statements that you made that day weren't correct?

14 A. Weren't?

15 Q. Were not correct?

16 A. Yes, sir.

17 MR. OLSON: Okay. Thank you.

18 THE COURT: Thank you, you can step down.

19 Mr. Olson, any additional witnesses?

20 MR. OLSON: No, Your Honor.

21 THE COURT: Very well. Then, Mr. Thompson,
22 what is the State's recommendation?

23 MR. THOMPSON: Thank you, Your Honor.

24 As the Court has previously noted,
25 Your Honor is sentencing this Defendant as a Persistent

1 Felony Offender on a Partner Family Member Assault that
2 is a sixth offense. It follows two previous felony
3 convictions for Partner Family Member Assault; in
4 addition to the ones previous to those. The victims in
5 the two previous cases were Cassie Morrison, just as in
6 the instant offense.

7 This Defendant's criminal history goes back
8 20 years and is rife with violence. And I can tell the
9 Court, when I saw this case come in again, I'm getting
10 tired of prosecuting Mr. Morrison for thumping Cassie
11 Morrison; I've done it twice before, our office has, I
12 think Mr. Parker did one and I did the other one
13 previously. But what surprised me, initially, upon
14 receiving this case, was that the Defendant served the
15 entire five years of the previous prison sentence, which
16 as this Court well knows in this environment of the
17 Department of Corrections, that's of note. I think that
18 he served that entire time.

19 What I was then curious about and what I was
20 looking forward to in the PSI, which was documented by
21 Ms. Carroll, was why. And my guess was that the
22 Defendant was a terrible parolee or in placement, and
23 that's exactly what's documented here up to and
24 including the point where the Defendant was placed at
25 our prerelease facility and put in a chemical dependency

1 program. But then, violated from a disciplinary hearing
2 in December for violations regarding possession of
3 alcohol and direct insolence and noted, as it reflected
4 in the write-ups, Mr. Morrison decided to drink while a
5 prerelease resident. The drinking was bad enough, but
6 compounded matters by getting physical and threatening
7 when the Great Falls Police Department picked him up.
8 His behavior cannot be tolerated. And that seems to be
9 the theme in this case.

10 And given that, I resolved that I was not
11 going to resolve this case, short of trial, particularly
12 with my satisfaction if it came to trial. And thus, I
13 am seeking a lengthy prison sentence for this Defendant,
14 based on what I have. This -- he is, in my opinion, the
15 worst domestic abuser that I have prosecuted. It's very
16 difficult to get up to the sixth offense, especially
17 when it's the same victim, it's exasperating, it's been
18 over, just six years, we've had this -- the prior two
19 felonies.

20 I'm fed up and I'm sure this Court's
21 sentence will reflect the fact this community is
22 certainly fed up for the continued violence this
23 Defendant perpetrates upon his family members; this time
24 involving his 6-year-old son, who had to have been
25 traumatized by this episode and luckily was removed to

1 the neighbor's house after the Defendant threatened him
2 directly.

3 But, while it may be true that he is a much
4 better person when not intoxicated, the fact is, he's
5 always intoxicated. And he has been given opportunities
6 for treatment, which are also documented, at length, in
7 the Presentence Investigation. So, it's not as though
8 he stands here without having gone through treatment,
9 without having been given opportunities to be placed on
10 ISP and prereleases, given different classes for his
11 behavior, chemical dependency treatment. It's one of
12 the longest, also, adjustment to supervision sections or
13 prior adjustment sections, I should say, as indicated in
14 the PSI, he's simply has never been successful on any
15 kind of placement, because of either alcohol use or
16 continued violence. It's also clear from his record
17 that when he commits the violence, he's often, as it
18 indicates of the few previous felonies, he's already
19 serving a sentence on one when he commits the next one.

20 And in this case, as I said before, he was
21 only -- less than three months out of prison and here he
22 is committing another violent felony against his wife.
23 And I don't think I need to go any further into the
24 facts and I don't think I need to educate this Court on
25 the particulars of these kinds of relationships and the

1 pathologies inherent, therein. I think this Court is
2 well aware of the particular relationships involved in
3 these kinds of violent situations.

4 So, clearly, while this Defendant is a
5 Persistent Felony Offender, that was not a sufficient
6 deterrent for a rehabilitative sentence to sentence him
7 to the minimum because that's the exact same sentence he
8 got in 2003 and here we are five years later, even
9 though he was warehoused, not a single thing
10 to -- anything to dissuade him from doing this again.

11 So, given all those factors and also the
12 recommendation by the Presentence Report author that
13 there be a consecutive sentence to the Montana State
14 Prison, in addition to the Defendant's Persistent
15 Felony Offender designation, I think -- and I stress
16 this -- I think a reasonable recommendation to this
17 Court, and a reasonable sentence if this Court adopts
18 it, is a sentence of 20 years to the Montana State
19 Prison with 5 of those years suspended. That's only a
20 slight -- to the Defendant's previous and unsuccessful
21 sentence and is entirely appropriate, now that we're
22 getting into a sixth offense.

23 So, I would ask the Court to adopt that
24 recommendation. And also the conditions as set forth by
25 Ms. Carroll in the Presentence Report.

1 The Defendant has indicated, in the PSI,
2 he's also served 196 days pretrial; and therefore,
3 should receive credit for those.

4 There's also an offense of Criminal
5 Mischief, a Misdemeanor, which I would just ask the
6 Court to provide the maximum of six months, run that
7 concurrently, as well as the Disorderly Conduct, which
8 is a 10-day maximum. And also, I have no objection with
9 that running concurrently. For a Defendant with
10 a -- who's only 40 years old, 41 in a couple of weeks,
11 this is an extraordinary criminal record of violence to
12 have raked up before this Court, in lieu of sentencing
13 today.

14 Thank you.

15 THE COURT: Thank you.

16 Mr. Olson.

17 MR. OLSON: Your Honor, I would request that
18 you impose a 5-year sentence. And again, as I eluded to
19 earlier, this case went to trial for several reasons;
20 among them, we couldn't reach a plea agreement, a
21 sentence that we all agreed on. But also, Mr. Morrison
22 was very concerned that the Court would understand what
23 really happened and I think that came out at trial. I
24 think it became clear at trial that the facts of this
25 case are not nearly as egregious as it appeared on

1 paper.

2 Ms. Morrison testified at trial that she
3 didn't suffer serious injury; she testified to that
4 today. This wasn't a case where a surprise attack or a
5 breaking and entering or an aggravated burglary. The
6 facts at trial, as far as the injury that was alleged,
7 that those weren't the facts that came out at trial. I
8 believe the facts came out that he put his hands around
9 her neck and held her down on the ground until a
10 neighbor pulled him off of her; but fortunately, there
11 was no serious injury.

12 So, Mr. Thompson characterizes this as a
13 horrific criminal, certainly has a concerning criminal
14 record, but the facts of this case are not the most
15 egregious that this Court sees, certainly. The facts
16 that came out at trial, this is a typical domestic
17 altercation. There was no physical injury.

18 And I think Ms. Morrison's request to the
19 Court for sentencing is important. I think what she
20 wants to see happen is as important, if not more
21 important, than what the State wants to see. It's her
22 life; it's her relationship. And so, I think the Court
23 should give that a considerable amount of weight. And
24 as the Court is aware, Ms. Morrison is requesting the
25 minimum sentence. She told us that she wishes it could

1 be less. She thinks five years is too much. Five years
2 is the minimum, that's what I'm requesting, but I would
3 ask the Court to take into account the particular facts
4 of this particular case. He is not prosecuted for an
5 assault on his son.

6 And his record stands on it's own, but the
7 particular facts of this case, it was a felony, simply
8 because of his record, it was not an aggravated assault,
9 it wasn't a felony assault. It was a felony simply
10 because of his record, Your Honor, there was no
11 physical -- substantial physical injury inflicted.

12 So, I would request the minimum 5-year
13 sentence, that's still a very lengthy sentence. I think
14 that's appropriate under the circumstances. I also ask
15 that you give credit for 196 days that he served. And
16 that the -- on the misdemeanors of those Counts run
17 concurrent with the felony sentence.

18 THE COURT: Thank you.

19 Mr. Morrison, you have the right to address
20 the Court regarding sentencing if you wish; you're not
21 required to say anything and I'm not going to hold it
22 against you if you don't; do you understand?

23 THE WITNESS: I do, Your Honor.

24 THE COURT: Okay. Is there anything that
25 you want to say?

1 THE WITNESS: If I could just say that,
2 Your Honor, I definitely understand where I stand here.
3 As my lawyer has stated, I've been honest with him since
4 this case started. I tried to be honest and not to
5 cause any waves and up to my end, responsibility. I
6 know whether -- what occurred. Alls I ever asked from
7 the beginning was -- and I do think the State realizes
8 that, even though it was in a position to -- I just ask
9 that the truth be known to the Court so that I can be
10 sentenced fairly.

11 And with that being said, I guess, something
12 on my behalf is, when I do get out of prison, with the
13 things that I did, Your Honor -- I was not going home,
14 it was upon the request of my wife that I come home and
15 we tried to salvage our marriage, which I wasn't -- when
16 I heard that, it was what I wanted.

17 And I'm very sorry for this whole thing, for
18 my wife also. I think what the problem was and it may
19 me -- both to understand a whole lot better now that I
20 do -- due to both of the -- of all of the difficulties
21 we have on both sides, Your Honor, due to our addictions
22 and our drinking. We couldn't, together, with all the
23 drinking and things and trying to salvage our marriage
24 and make up for the past wrongs that we both had for
25 each other. We should have, probably, should have

1 sought some outside help or counseling in the matter.
2 We attempted both, me, and myself also, to do the best I
3 could at that time. The situations in the household got
4 stressful, a lot of past frustrations came up and we
5 ended up -- old behaviors, Your Honor.

6 And for that, I own up to it and I will do
7 my part and take responsibility for that.

8 Like my lawyer has stated -- I don't know, I
9 guess that's all I have to say, Your Honor, just that I
10 firmly believe I never tried to deny any of the -- cause
11 any waves. The only reason we wasted the Court's time
12 was just to make sure the truth was brought forth so
13 that I could be sentenced accordingly.

14 THE COURT: All right, thank you, sir.

15 MR. OLSON: Can I add one more thing,
16 Your Honor?

17 THE COURT: Yes.

18 MR. OLSON: That Ms. Morrison testified here
19 today that when Jim is not drinking, he's a loving
20 father and a loving husband, a kind person. He's not an
21 evil person. Clearly, he has his relationship problems
22 with Ms. Morrison, who testified that's been going on
23 for awhile and there's alcohol involved, but he's not an
24 evil person and Ms. Morrison testified to that, and I
25 believe that is the case, that he can be a good husband

1 and a good father and a good person. I just wanted the
2 Court to note that.

3 THE COURT: All right, thank you.

4 In sentencing you, then, Mr. Morrison, I've
5 considered the correctional and the sentencing policies
6 of the State -- he can sit for now -- of the State of
7 Montana and the facts and circumstances of this case as
8 presented at the trial.

9 And as a threshold matter, I'm only
10 considering the facts that were presented at the trial
11 and upon which I found you guilty at that trial.

12 I've considered your criminal history. And
13 I've given, at least, some consideration to the fact
14 that you don't recall and perhaps dispute even some of
15 these criminal history entries. But even with that
16 dispute or lack of recollection that you have, it's
17 undisputed that this is a sixth offense of Partner
18 Family Member Assault. And there are other matters as
19 well in criminal history that are very serious and
20 indicated a very clear, violent criminal history.

21 And I have no doubt that you're sincere here
22 today. I don't think you're an evil person. I believe
23 Mr. Olson and your wife and I, frankly, believe it on
24 what I've seen, that you can be a responsible person, a
25 good person, and I'm sure you can be a good husband and

1 a good father.

2 In addition to your criminal history, woven
3 through that, is this alcohol issue that remains rampant
4 and as characterized by the probation officer,
5 seemingly, hopeless -- a seemingly hopeless addiction.

6 And beyond your just general violent
7 history, you've been a habitual abuser, not only in
8 general but of people that you otherwise care about the
9 most; and perhaps more importantly, the people that care
10 about you the most. Your criminal history clearly
11 indicates to me that, obviously, that you're not a good
12 candidate for a community placement. And that in light
13 of the repetitive nature of this type of behavior and
14 this offense, that a significant prison sentence is
15 appropriate in the case.

16 And so, it's time for the Court to do
17 something about this situation, to hold you accountable.
18 And despite the good things, aspects of your
19 circumstance and your personality, I feel duty-bound to
20 do that.

21 And so, for those reasons, on the offense of
22 Count IV, Disorderly Conduct, a Misdemeanor, I hereby
23 sentence you to serve 10 days in the Cascade County
24 Jail; that sentence shall run concurrent with your
25 sentence on Count I and Count III.

1 On Count III, Criminal Mischief, a
2 Misdemeanor, I sentence you to six months in the Cascade
3 County Jail and order that that sentence shall run
4 concurrent to your sentence on Count I and Count IV.

5 And on Count I, Partner Family Member
6 Assault, a Felony, sixth offense, and based upon your
7 status as a Persistent Felony Offender, I hereby
8 sentence you to serve a 17-year term of commitment in
9 the Montana State Prison. I suspend none of that time.
10 I grant you credit for 196 days time served,
11 presentence.

12 Now, because of the realities of the prison
13 system, you're not going to be there anywhere near close
14 to that amount of time; you know that and I know that.
15 That you're going be on parole and on a short chain with
16 them, if there's a problem when you're on parole. I'm
17 not going to restrict your parole eligibility and you
18 can take that up with the Parole Board at the
19 appropriate time.

20 That's the sentence of the Court.

21 Is there anything further from the State?

22 MR. THOMPSON: No, Your Honor. Thank you.

23 THE COURT: For the Defense.

24 MR. OLSON: No, Your Honor.

25 THE COURT: All right. Mr. Morrison, I

1 sincerely wish you good luck in this bad circumstance.

2 Is there something else that you wanted say?

3 THE WITNESS: Yes, I just wanted to state
4 that there's where the argument was in that PSI because
5 due to my past experience, sitting before that Board for
6 behavior and doing everything I could possibly do to
7 change and become a productive member of the
8 community --

9 THE COURT: Well, here's the thing with
10 that: Is that they, the Department of Corrections or
11 the Parole Board, is trying to base any decision on a
12 conviction that you don't have. At that time, you will
13 have the means available to get the official record of
14 your conviction and make sure that that's not what
15 they're doing. And if that's what they do, they'll have
16 a problem with that, but I can't address that today.

17 So, that's the sentence of the Court and
18 good luck to you, Mr. Morrison.

19 THE WITNESS: It's kind of strange that when
20 you get there what they say is I should have
21 straightened it out here --

22 THE COURT: Well, that's not what the
23 situation is and I've already told you what the
24 situation is as far as the Court's perspective and we're
25 done here. Thank you, sir.

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MR. OLSON: Thank you, Your Honor.

(Whereupon, the Hearing was concluded.)

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