

DA 18-0548

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 94N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RAYMOND ARLEN HOLMES,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Mineral, Cause Nos. DC-87-546, DC-15-014, and
DC-15-047
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Raymond Arlen Holmes, Self-Represented, Deer Lodge, Montana

For Appellee:

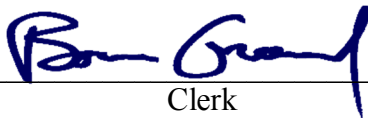
Timothy C. Fox, Montana Attorney General, Katie F. Schulz, Assistant
Attorney General, Helena, Montana

Ellen Donohue, Mineral County Attorney, Superior, Montana

Submitted on Briefs: March 13, 2019

Decided: April 23, 2019

Filed:


Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Raymond Arlen Holmes appeals from an order of the Fourth Judicial District Court, Mineral County, denying his motions to suspend his sentence. We affirm.

¶3 In August 2015, the State and Holmes entered into a plea agreement encompassing three criminal cases. Holmes agreed to admit to violating a prior suspended sentence for two felony burglary convictions and to plead guilty to multiple violations of an order of protection and a felony bail-jumping charge. At the District Court's oral pronouncement of Holmes's sentence, it summarized Holmes's net sentence for his numerous convictions as forty years in the Montana State Prison with all but twenty years and fifty days suspended. As part of the sentence, the court also agreed to recommend that Holmes be eligible for the Nexus drug treatment program and to suspend the remainder of his sentence upon his successful completion of the Nexus program. The court did not include language about the Nexus program in its written judgments, however. Therefore, Holmes filed unopposed motions to amend the written judgments to reflect: "Mr. Holmes will be eligible for the Nexus program and . . . all time will be suspended if he completes the Nexus program" The District Court issued orders amending the judgments and adopting the

language Holmes provided: “Mr. Holmes will be eligible for the Nexus program and . . . all time will be suspended if he completes the Nexus program”

¶4 In May 2016, the Nexus program denied admission to Holmes, citing the severity of his offenses. Holmes filed new motions in the District Court to amend his sentence to allow for the completion of an Intensive Treatment Unit instead of the Nexus program. The court took no action regarding his motions. In January 2017, Holmes filed motions to amend his sentence once again. The District Court subsequently denied them, stating it was no longer the proper entity to address Holmes’s request. Over the ensuing months, through a series of additional motions, Holmes repeatedly advanced the argument that the District Court should suspend the remainder of his sentence because he completed an Intensive Treatment Unit through the Montana State Prison. In July 2018, the District Court issued an order denying Holmes’s additional motions. Holmes appeals the order, raising the following issues: (1) whether the court erred by failing to issue an amended judgment, (2) whether the court erred by denying Holmes’s motions to suspend his sentence, and (3) whether the court lacked statutory authority to place conditions on Holmes’s sentence without suspending a portion of it.

¶5 Holmes argues first that the District Court erred by failing to hold a hearing when it modified the written judgment to conform with the oral pronouncement under § 46-18-116(2), MCA. We will not review issues on appeal to which a party failed to object at the trial court. *State v. Kotwicki*, 2007 MT 17, ¶ 8, 335 Mont. 344, 151 P.3d 892. Holmes failed to raise this argument to the District Court, and he accordingly waived it.

¶6 Holmes also argues his written judgment is unlawful under *State v. Johnson*, 2000 MT 290, 302 Mont. 265, 14 P.3d 480, because of an alleged conflict with the oral pronouncement of his sentence. Even though we generally refuse to consider issues on appeal that a party failed to object to before the trial court, we may review a criminal sentence not objected to below for legality. *Kotwicki*, ¶¶ 5, 8. We review questions of law *de novo* to determine whether the lower court’s interpretation of the law was correct. *Johnson*, ¶ 13 (citing *State v. Waters*, 1999 MT 229, ¶ 14, 296 Mont. 101, 987 P.2d 1142). It is well-established that “once a valid judgment and sentence have been signed, the court imposing that sentence [has] no jurisdiction to vacate or modify it except as provided by statute.” *State v. Hanners*, 254 Mont. 524, 526, 839 P.2d 1267, 1268 (1992). Nevertheless, a written judgment is merely evidence of a defendant’s oral sentence. *Johnson*, ¶ 15. If a written judgment and an oral pronouncement of sentence conflict, the defendant may request modification of the written judgment within 120 days after the court files the written judgment. Section 46-18-116(2), MCA. On appeal, we may determine that a portion of a written judgment is unlawful by determining: “whether the defendant was afforded the opportunity to respond to its inclusion upon sufficient notice at sentencing, and second, whether that portion of the written judgment substantively increases one of two things: (1) the defendant’s loss of liberty; and (2) the defendant’s sacrifice of property.” *Johnson*, ¶ 24.

¶7 In this case, the District Court afforded Holmes the opportunity to make a motion to correct the erroneous written judgment—which Holmes took advantage of—and the

court granted his motion, even utilizing the exact language Holmes himself provided. Further, the amended judgment would suspend all the remaining time for Holmes's sentence upon his successful completion of the Nexus program. Certainly, this option neither increased Holmes's loss of liberty nor his sacrifice of property.

¶8 Holmes further argues the oral pronouncement of his sentence nonetheless afforded him the opportunity to complete any available treatment program to suspend the remaining length of his sentence, which the amended written judgment does not recognize. However, the transcript from Holmes's sentencing hearing does not support his contention. The District Court gave Holmes the option to complete the Nexus program: if Holmes completed the program, the court agreed to suspend the remainder of his sentence. Although the court also referenced how Holmes needed treatment generally, the court's statements only related back to the option for Holmes to complete the Nexus program. Most importantly, the District Court did not tell Holmes that he could complete alternative programs to satisfy the Nexus program requirement. Accordingly, the District Court's amended written judgment—adopting language Holmes himself provided—does not conflict with the court's oral pronouncement of Holmes's sentence.

¶9 Because the amended written judgment and the oral pronouncement of Holmes's sentence do not conflict, the District Court did not err by denying Holmes's many motions to suspend his remaining sentence on that basis. To the extent that Holmes asked the District Court to modify his existing sentence, the court plainly lacked the authority to do so. *See Hanners*, 254 Mont. at 526, 839 P.2d at 1268. Finally, Holmes argues the District

Court erred in placing conditions on the suspended portion of his sentence without suspending any portion of it, amounting to conditions placed on his parole. However, as a net sentence for all three cases, the District Court sentenced Holmes to forty years at the Montana State Prison with all but twenty years and fifty days suspended. The District Court correctly imposed conditions that applied to the suspended portion of his sentence. Accordingly, we affirm the District Court's order denying Holmes's motions to suspend his sentence.

¶10 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶11 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ BETH BAKER
/S/ JIM RICE