

FILED

08/27/2021

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 20-0268

**APPENDIX**

Oral Pronouncement of Sentence.....App. A

Written Judgment.....App. B

## APPENDIX A

1 MR. COTTER: No, Your Honor.

2 SENTENCING

3 THE COURT: All right. So, I've  
4 reviewed the Plea Agreement, and I am familiar  
5 with the case. I am familiar with the numbers and  
6 I am familiar with the documents and I heard the  
7 testimony both in these proceedings on a number of  
8 issues.  
9

10 I am going to follow the  
11 recommendation of the parties with respect to  
12 deferring imposition of sentence for six years.  
13 And the reason for that is I think it comports  
14 with Montana law with respect to deferred  
15 sentences. This is the first felony and that is  
16 stated public policy and so I will follow that.  
17

18 With respect to terms and conditions  
19 of supervisory community supervision, other than  
20 the amendments that we talked about earlier, I am  
21 going to impose the terms and conditions found in  
22 paragraphs 1 through 29 as amended as I said  
23 earlier. You will get credit for the twelve days  
24 served in the event that deferment is revoked for  
25 some reason.  
26

1                   So, the final issue that we have then  
2 is restitution. And we've heard talk, and  
3 numbers, and back and forth, and all of these  
4 things. And I believe the testimony supports  
5 restitution in the amount of ninety-two thousand  
6 one hundred eighty nine dollars and fifty cents  
7 (\$92,189.50). Of that amount five thousand seven  
8 hundred (\$5700) of it will be jointly and  
9 severally liable for that with Mr. Kampf. Those  
10 numbers are for the check totally two thousand  
11 seven hundred dollars (\$2700), the check totaling  
12 five hundred dollars (\$500), the check totaling  
13 twenty five hundred dollars (\$2500). Is that  
14 right? Yeah. The forty-five hundred dollars  
15 (\$4500) is a promissory note that was signed by  
16 the Defendant in this case and it is appropriate  
17 that she be responsible for that. The purpose for  
18 the other loans—And so the ten thousand two  
19 hundred (\$10,200) is the amount that she will be  
20 jointly and severally liable and we include the  
21 forty-five hundred (\$4500). They both signed  
22 signed that promissory note. The other ones, the  
23 undisputed testimony is that they were to benefit  
24  
25  
26

1 the Defendant in this case.

2           The statute requires that he gets  
3 full restitution for all damages incurred and I  
4 find that damages that he incurred in hiring Mr.  
5 Cossitt chasing this stuff is appropriate and for  
6 him to recover.

7           So, with respect to payments made  
8 prior to the April 13, 2015 note, the undisputed  
9 testimony is that it was all wrapped up that that  
10 is what they owed on that date. So to the extent  
11 there's concern about getting credit for it you  
12 got credit for it already. Same with that ten  
13 thousand dollar (\$10,000) check, it was before  
14 that note. Couldn't have been payment on the note  
15 because the note hadn't been written.

16           So, the amount of the restitution  
17 stated in the Affidavit is the amount of  
18 restitution that I am ordering for for Davy  
19 French. Of that amount ten thousand two hundred  
20 (\$10,200) of it is jointly and severally the  
21 Defendant is responsible jointly and severally  
22 with Mr. Kampf.

23  
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1                   Now, for the record, that judgment  
2 does say that ten thousand two hundred forty-three  
3 dollars (\$10,243) of that, the restitution that  
4 was ordered in Mr. Kampf's case, was specifically  
5 directed towards Davy French. Thirty two (\$32) of  
6 it was to Subway, and Beaman's never submitted  
7 their, if I remember correctly, never submitted  
8 their victim affidavit. So, to the extent that  
9 there's any confusion about that that's what it  
10 says. I said credit for the 12 days served.  
11  
12 Right?

13                   MS. BORIS:    You did.

14                   THE COURT:    Is there anything I  
15 missed? And I think it comports—it definitely  
16 comports with Montana law and I believe that it is  
17 consistent with Montana's public policy with  
18 respect to deferments. Anything I missed, Mr.  
19 Cotter?  
20

21                   MR. COTTER:    No, Your Honor.

22                   THE COURT:    Ms. Boris, did I miss  
23 anything?

24                   MS. BORIS:    No, Your Honor.  
25  
26

1                   THE COURT:    Okay.  We are adjourned.

2 I will be back in ten minutes to do the DN cases.

3                   Whereupon, the proceeding was concluded.

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## APPENDIX B

7  
CLERK OF DISTRICT COURT  
TRIDIA BROOKS

1 MATTHEW J. CUFFE, District Judge  
2 512 California Avenue, Libby, MT 59923

2020 MAR 18 PM 4:30

3 FILED

4 BY: \_\_\_\_\_  
DEPUTY

5 MONTANA NINETEENTH JUDICIAL DISTRICT COURT,  
6 LINCOLN COUNTY

7 STATE OF MONTANA,

8 Plaintiff,

9 vs.

10 DESIRAE ELLEN MCDONOUGH,  
11 D/O/B 4/21/1982

12 Defendant.

Cause No. DC-17-126

**ORDER FOR DEFERRED IMPOSITION OF  
SENTENCE**

13 The Defendant, DESIRAE ELLEN MCDONOUGH, appeared before this Court on  
14 December 9, 2019, present with her counsel, Britt Cotter, Esq. The State of Montana  
15 was represented by Marcia Boris, Lincoln County Attorney. The Court advised  
16 Defendant of her rights. Defendant entered a plea of no contest to the offense of  
17 **EXPLOITATION OF AN OLDER PERSON**, a felony, in violation of § 45-6-333, M.C.A.,  
committed on or about between April 1, 2015 and August 31, 2017, in Lincoln County,  
Montana.

18 Defendant admitted that a jury may convict her if Defendant went to trial on the  
19 charge. The Court accepted the no contest plea of guilty.

20 The Court received a Pre-sentence Investigation Report and conducted a  
21 hearing in aggravation or mitigation of sentence on March 9, 2020. Defendant was  
22 personally present with her counsel, Britt Cotter, Esq. The State was represented by  
23 Marcia Boris, Lincoln County Attorney. The Court heard recommendations from the  
parties concerning sentencing and restitution.

24 IT IS HEREBY ORDERED:

25 1. As to the offense of **EXPLOITATION OF AN OLDER PERSON**, a felony,  
26 the imposition of sentence is deferred for a period of six (6) years.  
27

28 **ORDER FOR DEFERRED IMPOSITION OF SENTENCE**  
**RE: DESIRAE ELLEN MCDONOUGH - DC-17-126**  
PAGE 1

1           2.     In the event of revocation of Defendant's probation, Defendant shall  
2 receive credit for 12 days time served by reason of prior incarceration as of the date of  
3 this Judgment/Order.

3           3.     The Defendant shall pay restitution to Davy A. French, P.O. Box 2065,  
4 Eureka, MT 59917 in the amount of \$92,189.50 until restitution is paid in full.

5           IT IS HEREBY FURTHER ORDERED:

6           During the period of time imposition of sentence is deferred, Defendant shall  
7 comply with the following terms and conditions of probation:

- 8           1.     The Defendant shall be placed under the supervision of the Department  
9 of Corrections, subject to all rules and regulations of Adult Probation &  
10 Parole.
- 11          2.     The Defendant must obtain prior written approval from her supervising  
12 officer before taking up residence in any location. The Defendant shall  
13 not change her place of residence without first obtaining written  
14 permission from her supervising officer or the officer's designee. The  
15 Defendant must make the residence open and available to an officer for a  
16 home visit or for a search upon reasonable suspicion. The Defendant will  
17 not own dangerous or vicious animals and will not use any device that  
18 would hinder an officer from visiting or searching the residence.
- 19          3.     The Defendant must obtain permission from her supervising officer or the  
20 officer's designee before leaving his assigned district.
- 21          4.     The Defendant must seek and maintain employment or maintain a  
22 program approved by the Board of Pardons and Parole or the supervising  
23 officer. Unless otherwise directed by her supervising officer, the  
24 Defendant must inform her employer and any other person or entity, as  
25 determined by the supervising officer, of her status on probation, parole,  
26 or other community supervision.
- 27          5.     Unless otherwise directed, the Defendant must submit written monthly  
28 reports to her supervising officer on forms provided by the probation and  
parole bureau. The Defendant must personally contact her supervising  
officer or designee when directed by the officer.
6.     The Defendant is prohibited from using, owning, possessing, transferring,  
or controlling any firearm, ammunition (including black powder), weapon,  
or chemical agent such as oleoresin capsicum or pepper spray.

- 1 7. The Defendant must obtain permission from her supervising officer  
2 before engaging in a business, purchasing real property, purchasing an  
3 automobile, or incurring a debt.
- 4 8. Upon reasonable suspicion that the Defendant has violated the  
5 conditions of supervision, a probation and parole officer may search the  
6 person, vehicle, residence of the Defendant, and the Defendant must  
7 submit to such search. A probation and parole officer may authorize a  
8 law enforcement agency to conduct a search, provided the probation and  
9 parole officer determines reasonable suspicion exists that the Defendant  
10 has violated the conditions of supervision.
- 11 9. The Defendant must comply with all municipal, county, state, and federal  
12 laws and ordinances and shall conduct herself as a good citizen. The  
13 Defendant is required, within 72 hours, to report any arrest or contact with  
14 law enforcement to her supervising officer or designee. The Defendant  
15 must be cooperative and truthful in all communications and dealings with  
16 any probation and parole officer and with any law enforcement agency.
- 17 10. The Defendant is prohibited from using or possessing alcoholic  
18 beverages and illegal drugs. The Defendant is required to submit to  
19 bodily fluid testing for drugs or alcohol on a random or routine basis and  
20 without reasonable suspicion.
- 21 11. The Defendant is prohibited from gambling.
- 22 12. The Defendant shall pay all fines, fees, and restitution ordered by the  
23 sentencing court.
- 24 13. The Defendant shall pay the following fees and/or charges:
  - 25 a. The Probation & Parole Officer shall determine the amount of  
26 supervision fees (§46-23-1031, MCA) to be paid each month in the  
27 form of money order or cashier's check to the Department of  
28 Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620  
(\$50 per month if the Defendant is sentenced under §45-9-202,  
MCA, dangerous drug felony offense and placed on ISP). The  
DOC shall take a portion of the Defendant's inmate account if the  
Defendant is incarcerated.
  - b. Surcharge of the greater of \$20 or 10% of the fine for each felony  
offense, payable to the Clerk of District Court, 512 California  
Avenue, Libby, MT 59923. [§46-18-236(1)(b), MCA] **TOTAL**  
**\$20.00**

1 c. Surcharge for victim and witness advocate programs of \$50 for  
2 each misdemeanor or felony charge under Title 45, Crimes; §61-8-  
3 401 (DUI); §61-8-406 (DUI-alcohol); or §61-8-411 (DUI-delta-9-  
4 tetrahydrocannabinol). [§46-18-236(1)(c), MCA], payable to the  
5 Clerk of District Court, 512 California Avenue, Libby, MT 59923.

6 **TOTAL \$50.00**

7 d. \$10.00 for court information technology fee payable to the Clerk of  
8 District Court, 512 California Avenue, Libby, MT 59923. (§3-1-  
9 317, MCA) **TOTAL \$10.00**

10 e. A \$50 fee at the time a PSI report is completed, unless the court  
11 determines the Defendant is not able to pay the fee within a  
12 reasonable time (§46-18-111, MCA). The Defendant shall submit  
13 this payment to the Department of Corrections Collection Unit,  
14 P.O. Box 201350, Helena, MT 59620. **TOTAL \$50.00**

15 f. The Defendant shall pay court-ordered restitution by money order  
16 or cashier's check sent to the Department of Corrections,  
17 Collection Unit, P.O. Box 201350, Helena, MT 59620. The  
18 Defendant shall be assessed a 10% administration fee on all  
19 restitution ordered. All of the methods for collection of restitution  
20 provided under §46-18-241 through §46-18-249, MCA, shall apply,  
21 including the garnishment of wages and interception of tax  
22 refunds. Pursuant to §46-18-244(6)(b), MCA, the Defendant shall  
23 sign a statement allowing any employer to garnish up to 25% of  
24 his wages. The Defendant shall continue to make monthly  
25 restitution payments until restitution is paid in full, even after  
26 incarceration or supervision has ended. **TOTAL: \$92,189.50. The  
27 amount of \$10,200.00 shall be joint and several with Richard  
28 Kampf, Lincoln County Cause No. DC-17-92, The Collection  
Unit shall distribute restitution to Davy A. French, P.O. Box  
2065, Eureka, MT 59917.**

g. The Defendant shall pay costs of legal fees and expenses defined  
in §25-10-201, MCA, plus costs of jury service, prosecution, and  
pretrial, probation, or community service supervision or \$100.00  
per felony case or \$50.00 per misdemeanor case, whichever is  
greater (§46-18-232, MCA), payable to the Clerk of District Court,  
512 California Avenue, Libby, MT 59923. **TOTAL: \$100.00.**

14. The Defendant, convicted of a felony offense, shall submit to DNA  
testing. (§44-6-103, MCA)

- 1 15. The Defendant shall be given credit against the time served in jail prior to  
2 or after conviction. (§46-18-403, MCA)
- 3 16. The Defendant will surrender to the court any registry identification card  
4 issued under the Medical Marijuana Act. [§46-18-202(1)(f), MCA]
- 5 17. At the discretion of the Probation Officer, the Defendant shall obtain a  
6 chemical dependency evaluation by a state-approved evaluator. The  
7 Defendant shall pay for the evaluation and follow all of the evaluator's  
8 treatment recommendations.
- 9 18. The Defendant shall continue to participate in mental health treatment at  
10 Bozeman Deaconess and continue seeing Tia Utzinger, LCSW. The  
11 Defendant shall pay for the evaluation and follow all of the evaluator's  
12 treatment recommendations.
- 13 19. At the discretion of the Probation Officer, the Defendant shall successfully  
14 complete Cognitive Principles & Restructuring (CP&R) or similar cognitive  
15 and behavioral modification program.
- 16 20. The Defendant shall not possess or use any electronic device or scanner  
17 capable of listening to law enforcement communications.
- 18 21. The Defendant shall abide by a curfew as determined necessary and  
19 appropriate by the Probation & Parole Officer.
- 20 22. The Defendant shall not enter any bars.
- 21 23. The Defendant shall not enter any casinos.
- 22 24. The Defendant shall provide a yearly credit report.
- 23 25. The Defendant shall not knowingly associate with probationers, parolees,  
24 prison inmates, or persons in the custody of any law enforcement agency  
25 without prior approval from the Probation & Parole Officer. The  
26 Defendant shall not associate with persons as ordered by the court or  
27 BOPP. The Defendant may associate with Richard Kampf.
- 28 26. The Defendant shall not knowingly have any contact, oral, written,  
electronic or through a third party, with the victim(s) unless such contact  
is voluntarily initiated by the victim(s) through the Department of  
Corrections. DOC staff may notify victims about the availability of  
opportunities for facilitated contact with their offenders without being  
considered "third parties."

- 1 27. The Defendant shall not manage finances for others or work as a broker.  
2 The Defendant will not engage in financial transactions with elderly  
3 individuals.
- 4 28. The Defendant shall comply with all sanctions given as a result of an  
5 intervention, on-site (preliminary), or disciplinary hearing.
- 6 29. The PSI report shall be released by the Department to certain persons,  
7 such as treatment providers, mental health providers, and/or medical  
8 providers, as needed for the Defendant's rehabilitation.

9 THE COURT'S REASONS FOR THIS SENTENCE:

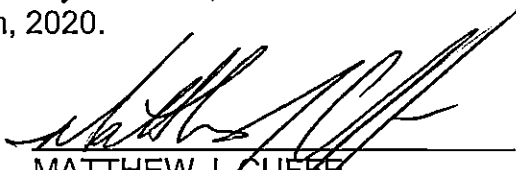
- 10 1. The sentence comports with Montana law and is consistent with public  
11 policy.
- 12 2. The sentence is consistent with the agreement of the parties.

13 NOTICE:

14 If a written judgment and an oral pronouncement of sentence or other disposition  
15 conflict, the defendant or the prosecutor in the county in which the sentence was  
16 imposed may, within one hundred twenty (120) days after filing of the written judgment,  
17 request that the court modify the written judgment to conform to the oral  
18 pronouncement. The court shall modify the written judgment to conform to the oral  
19 pronouncement at a hearing, and the defendant must be present at the hearing unless  
20 the defendant waives the right to be present or elects to proceed pursuant to §46-18-  
21 115, M.C.A. The defendant and the prosecutor waive the right to request modification  
22 of the written judgment if a request for modification of the written judgment is not filed  
23 within one hundred twenty (120) days after the filing of the written judgment in the  
24 sentencing court.

25 DONE IN OPEN COURT the 9th day of March, 2020.

26 SIGNED this 18<sup>th</sup> day of March, 2020.

27   
28 MATTHEW J. CUFFE  
District Judge

cc: Brooks  
Boris Polan Garza  
Pfaff Jcorelegal Watson  
3-19-20 jl