

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0548

STATE OF MONTANA,

Plaintiff and Appellee,

v.

WILLIAM JOHN HENRY,

Defendant and Appellant.

**STIPULATION, MOTION TO DISMISS APPEAL WITH
PREJUDICE, AND PROPOSED ORDER FOR REMAND**

The parties, by and through their respective counsel as evidenced by the signatures below, stipulate and move for an order remanding this proceeding to the Third Judicial District Court, Powell County, with instructions to modify the Amended Judgment entered on September 17, 2020.

On September 16, 2005, the Powell County District Court sentenced William Henry ("Mr. Henry") to four concurrent 50-year Montana State Prison sentences for four counts of sexual intercourse without consent, in violation of Mont. Code Ann. § 45-5-503. (D.C. Doc.

51 at 1.) As part of Mr. Henry's sentence, the court ordered he pay an unspecified amount of restitution. (D.C. Doc. 51 at 3.)

On October 15, 2019, in response to Mr. Henry's petition for writ of habeas corpus, the Montana Supreme Court remanded Mr. Henry's case to the district court to conduct a restitution hearing and specify the amount of Mr. Henry's restitution obligation. (*Henry v. State*, OP 19-0164, Order (October 15, 2019)). The district court conducted the restitution hearing and issued its Amended Judgment that specified Mr. Henry's restitution obligation. (D.C. Doc. 73.) The Amended Judgment incorrectly states that Mr. Henry was guilty of violating Mont. Code Ann. § 45-5-203, the statute prohibiting the offense of intimidation. (D.C. Doc. 73 at 3 (emphasis added).) As the record provides, Mr. Henry was in fact guilty of violating Mont. Code Ann. § 45-5-503, the statute prohibiting the offense of sexual intercourse without consent. (D.C. Doc. 51 at 1 (emphasis added).)

Montana Code Annotated § 46-20-703(1) authorizes this Court to "modify the judgment or order from which the appeal is taken." Mont. Code Ann. § 46-20-703(1). Moreover, Mont. Code Ann. § 46-18-116(3) provides that a court "may correct a factually erroneous sentence or

judgment at any time.” Mont. Code Ann. § 46-18-116(3). A court always has “the power to make the record speak the truth.” *State v. Megard*, 2006 MT 84, ¶ 20, 332 Mont. 27, 134 P.3d 90. This Court will direct district courts to correct clerical errors in the record even when the error has “no bearing upon the integrity” of the conviction. *State v. Hancock*, 2016 MT 21, ¶ 16, 382 Mont. 141, 364 P.3d 1258; *see State v. Goff*, 2011 MT 6, ¶¶ 32-33, 359 Mont. 107, 247 P.3d 715. Correcting the error ensures the accuracy of the judgment and avoids confusion and future litigation. *Hancock*, ¶ 16; *Goff*, ¶ 33.

Without agreeing to all the arguments advanced by Mr. Henry, the Attorney General’s Office, in the interests of justice and judicial economy, concedes under the particular facts presented in this record that the Amended Judgment entered on September 17, 2020, incorrectly states that Mr. Henry was guilty of violating Mont. Code Ann. § 45-5-203. The Amended Judgment should say Mr. Henry was guilty of violating Mont. Code Ann. § 45-5-503. In the interests of ensuring Mr. Henry’s Amended Judgment is accurate, and to prevent confusion and future litigation, the parties request this Court remand to the Third Judicial District Court

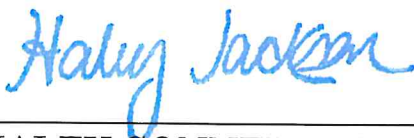
with instructions to modify the Amended Judgment to accurately state that Mr. Henry was guilty of violating Mont. Code Ann. § 45-5-503.

Based upon this stipulation, Mr. Henry agrees to the voluntary dismissal of the remainder of his appeal with prejudice.

The parties jointly request the Court grant their motion and enter the proposed order.

Respectfully submitted this 24 day of September, 2021.

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DATE

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CERTIFICATE OF SERVICE

I, Haley Connell Jackson, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 09-27-2021:

Kathryn McEnery (Govt Attorney)
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Electronically signed by Kim Harrison on behalf of Haley Connell Jackson
Dated: 09-27-2021