

ORIGINAL

MONTANA EIGHTH JUDICIAL DISTRICT COURT
CASCADE COUNTY

STATE OF MONTANA,

Plaintiff,

vs

ESANDRO ROMAN RODRIGUEZ,

Defendant.

Cause No. CDC-19-793

**SENTENCING
ORDER, JUDGMENT,
BOND
EXONERATION, &
ORDER TO CLOSE**

This case was before the Court on July 9, 2021 for sentencing. Mr. Rodriguez appeared in custody and through his counsel, Roberta Cross Guns and Dean Koffler. Deputy County Attorney Robertson represented the State. Deborah Robart testified for the defense.

On Count II: Aggravated Kidnapping, a Felony, the State recommended a ten-year prison term with five years suspended. The Defendant recommended a ten-year DOC commitment with five suspended.

On Count III: Assault With a Weapon (Accountability), a Felony, the State recommended a consecutive twenty-year prison term with five years suspended. The Defendant recommended a fully suspended twenty-year DOC commitment.

On Count IV: Aggravated Burglary (Accountability), a Felony, the State recommended a consecutive forty-year prison term with five years suspended. The Defendant recommended a fully suspended twenty-year DOC commitment.

On Count V: Assault With a Weapon (Accountability), a Felony, the State recommended a consecutive twenty-year prison term with five years suspended. The Defendant recommended a fully suspended twenty-year DOC commitment.

Mr. Rodriguez exercised his right of allocution.

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In determining the sentence, the Court considered the correctional and sentencing policy of the State of Montana, the unique circumstances of this case, the Defendant's prior criminal history, the PSI Report, the Defendant's individual circumstances and needs, and his potential for rehabilitation and to return to productive and responsible status as a citizen of this State. The reasons for the sentence imposed are as follows.

A jury convicted Mr. Rodriguez of Count II: Aggravated Kidnapping, a Felony; Count III: Assault With a Weapon (Accountability), a Felony; Count IV: Aggravated Burglary (Accountability), a Felony; and Count V: Assault With a Weapon (Accountability), a Felony. He and his co-defendant Jesse Daniels forced William Dayrider and Amanda Brown into their car at gunpoint and drove to the residence where Mr. Dayrider, Mr. Brown, and several others lived. Mr. Rodriguez kept a gun trained on Ms. Brown during the incident and at least once told her he would blow her head off. Upon arrival at the residence Mr. Rodriguez waited outside with Ms. Brown while Mr. Daniels entered it without permission and threatened everyone there, including Leah Gray, with a pistol.

Mr. Rodriguez's criminal history consists of a juvenile record and one adult conviction for Criminal Possession of Dangerous Drugs. He has multiple serious infractions at the jail. The Court knows of at least one of his fellow inmates who have been charged with Possession of Deadly Weapon by Prisoner for hiding home-made jail weapons that actually belonged to Mr. Rodriguez. AP&P's risk assessment tool indicates he is at "high" risk to reoffend. Based on the whole case, including but not limited to the AP&P risk assessment, the prospects of rehabilitating him are guarded.

The statutory ranges for the crimes at issue are:

Aggravated Kidnapping: 2 to 10 years and \$50,000.¹

Assault with Weapon: 20 years and/or \$50,000.

Aggravated Burglary: 40 years and/or \$50,000.

The alternatives open to the Court other than prison are commitments to the Department of Corrections, suspended sentence, or – because these are Mr. Rodriguez’s first adult convictions - a deferred sentence.

In view of the record of the case, the Pre-Sentence Investigation Report, and the presentations at the *Sentencing Hearing*, **IT IS HEREBY ORDERED** that Mr. Rodriguez is sentenced as follows:

On Count II: Aggravated Kidnapping, a Felony, a **10-year** term at the Montana State Prison, with **none** of the time suspended.

On Count III: Assault With a Weapon (Accountability), a Felony, a **10-year** term at the Montana State Prison, with **5 years suspended**. This sentence shall run **consecutively to** the sentence on Count II.

On Count IV: Aggravated Burglary (Accountability), a Felony, a **10-year** term at the Montana State Prison, with **5 years suspended**. This sentence shall run **consecutively to** the sentences on Counts II and III.

¹During the hearing the Court initially noted and read in the general sentencing range for this offense, which is execution, life imprisonment, or 2 to 100 years. Counsel for both sides corrected the Court, observing it was undisputed that this particular Aggravated Kidnapping fell within the more lenient final clause of the sentencing range because it was undisputed that Mr. Rodriguez had released Ms. Brown alive, in a safe place, without serious bodily injury.

On Count V: Assault With a Weapon (Accountability), a Felony, a **10-year** term at the Montana State Prison, with **5 years suspended**. This sentence shall run **consecutively** to the sentences on Counts II, III, and IV.

He is to receive credit for time served in the amount of **610 days**.

The suspension of portions of these sentences is contingent upon Mr. Rodriguez's compliance with the following conditions:

1. The Defendant shall be placed under the supervision of the Department of Corrections, subject to all rules and regulations of the Adult Probation & Parole Bureau.
2. The Defendant must obtain prior written approval from the Defendant's supervising officer before taking up residence in any location. The Defendant shall not change the Defendant's place of residence without first obtaining written permission from the Defendant's supervising officer or the officer's designee. The Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The Defendant will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.
3. The Defendant must obtain permission from the Defendant's supervising officer or the officer's designee before leaving the Defendant's assigned district.
4. The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by the Defendant's supervising officer, the Defendant must inform the Defendant's employer and any other person or entity, as determined by the supervising officer, of the Defendant's status on probation, parole, or other community supervision.

5. Unless otherwise directed, the Defendant must submit written monthly reports to the Defendant's supervising officer on forms provided by the probation and parole bureau. The Defendant must personally contact the Defendant's 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.
7. The Defendant must obtain permission from the Defendant's supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.
8. Upon reasonable suspicion that the Defendant has violated the conditions of supervision, a probation & parole officer may search the person, vehicle, and residence of the Defendant, and the Defendant must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the Defendant has violated the conditions of supervision.
9. The Defendant must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen. The Defendant is required, within 72 hours, to report any arrest or contact with law enforcement to the Defendant's supervising officer or designee. The Defendant must be cooperative and truthful in all communications and dealing with any probation and parole officer and with any law enforcement agency.
10. The Defendant is prohibited from using or possessing alcoholic beverages and illegal drugs. The Defendant is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.
11. The Defendant is prohibited from gambling.

12. The Defendant shall pay all fines, fees, and restitution ordered by the sentencing court.
13. The Defendant shall pay the following fees and/or charges:
 - a. The Probation & Parole Office shall determine the amount of supervision fees (§46-23-1031, MCA) to be paid each month in the form of money order or cashier's check to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620 (\$50 per month if the Defendant is sentenced under §45-9-202, MCA, for a 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 \$15 for each misdemeanor. [§46-18-236(1)(a), MCA]
 - c. Surcharge of the greater of \$20 or 10% of the fine for each felony offense. [§46-18-236(1)(b), MCA]
 - d. Surcharge for victim and witness advocate programs of \$50 for each misdemeanor or felony charge under Title 45, Crimes; §61-8-401 (DUI); or §61-8-406 (DUI-alcohol); or 61-8-411 (DUI-delta-9-tetrahydrocannabinol). [§46-18-236(1)(c), MCA].
 - e. One \$10.00 charge for the entire case for court information technology fee. (§3-1-317, MCA)
 - f. ~~Costs of assigned counsel: (46-8-113, MCA).~~
 - i. ~~\$800 for one or more felony charges.~~
 - g. ~~A \$50 fee at the time a PSI report is completed, unless the Court determines the Defendant is not able to pay the fee within a reasonable time (46-18-111, MCA). The Defendant shall submit this payment to the Department of Corrections Collections Unit, P.O. Box 201350, Helena, MT 59620.~~

- h. ~~The Defendant shall pay court-ordered restitution by money order or cashier's check sent to the Department of Corrections, Collection Unit, P.O. Box 201350, Helena, MT 59620. The Defendant shall be assessed a 10% administration fee on all restitution ordered. All of the methods for collection of restitution provided under §46-18-241 through §46-18-249, MCA, shall apply, including garnishment of wages and interception of tax refunds. Pursuant to §46-18-244(6)(b), MCA, the Defendant shall sign a statement allowing any employer to garnish up to 25% of the Defendant's wages. The Defendant shall continue to make monthly restitution payments until he/she has paid full restitution, even after incarceration or supervision has ended.~~
- i. ~~The Defendant shall pay a fine(s) over and above any amount credited for pre-conviction incarceration as ordered and directed by the court. (§46-18-231, MCA). Recommended net fine to paid to the Clerk of District Court \$_____.~~
- j. ~~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 per felony case or \$50 per misdemeanor case, whichever is greater (§46-18-232, MCA).~~

The Court is NOT imposing Conditions 13(f) through 13(j).

14. If the Defendant is convicted of a crime listed in §46-23-502(13), MCA, the Defendant shall register as a violent offender. [§46-18-201(7), MCA]
15. The Defendant, convicted of a felony offense, shall submit to DNA testing. (§44-6-103, MCA).
16. The Defendant shall be given credit against the time served in jail prior to or after conviction. (§46-18-403, MCA).

17. The Defendant shall obtain a chemical dependency evaluation by a state-approved evaluator. The Defendant shall pay for the evaluation and follow all of the evaluator's treatment recommendations.
18. The Defendant is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. Defendant shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the state-approved counseling provider, and complete a minimum of 40 hours of counseling. [§45-5-206(4)(a) and (b), MCA; 45-5-212(3), MCA]
19. The Defendant shall not abscond from supervision. Absconding is a non-compliance violation as defined in § 46-23-1001(1), MCA.
20. The Defendant shall obtain a mental health evaluation/assessment by a state-approved evaluator. The Defendant shall pay for the evaluation and follow all of the evaluator's treatment recommendations.
21. The Defendant shall not possess or use any electronic device or scanner capable of listening to law enforcement communications.
22. The Defendant shall not knowingly associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer outside a work, treatment, or self-help group setting. The Defendant shall not associate with persons as ordered by the court or BOPP.
23. 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."

24. The Defendant shall advise all medical personnel of addiction history/conviction, including all prescribed narcotics and/or medical marijuana.
25. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.
26. The Defendant will complete any programming as deemed necessary by their supervising officer.
27. The PSI report shall be released by the Department to certain persons, such as treatment providers, mental health providers, and/or medical providers, as needed for the Defendant's rehabilitation.

If a written judgment and an oral pronouncement of sentence or other disposition conflict, Mr. Rodriguez or the prosecutor may, within 120 days after filing of the written judgment, request that the Court modify the written judgment to conform to the oral pronouncement. The Court shall modify the written judgment to conform to the oral pronouncement at a hearing, and Mr. Rodriguez must be present at the hearing unless Mr. Rodriguez waives the right to be present or elects to proceed pursuant to Mont. Code Ann. § 46-18-115. Mr. Rodriguez and the prosecutor waive the right to request modification of the written judgment if a request for modification of the written judgment is not filed within 120 days after the filing of the written judgment in the sentencing court.

**ANY BOND IN THIS CASE IS HEREBY EXONERATED.
THE CLERK IS DIRECTED TO CLOSE THIS FILE.**



Digitally signed by Judge John Kutzman
DN: cn=Judge John Kutzman, o=Montana Judicial
Branch, ou=Eighth Judicial District,
email=jkutzman@mt.gov, c=US
Date: 2021.08.11 10:21:00 -06'00'

John A. Kutzman
District Court Judge

cc: Defense Counsel/Roberta Cross Guns and Dean Koffler
Defendant c/o counsel
County Attorney/Robertson
Adult Probation and Parole
Montana State Prison
JCOR Legal (email only)
Cascade County Sheriff's Office
GFPD
Montana State ID (MANS Only)

CERTIFICATE OF MAILING

This is to certify that the foregoing was
duly served by mail upon counsel of
record at their address this 11

day of August, 2021

TINA HENRY, CLERK OF COURT

By [Signature] DEPUTY