

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No.

---

STATE OF MONTANA,

Plaintiff and Appellee,

v.

GARRETT ALAN LEE,

Defendant and Appellant.

---

**PETITION FOR OUT-OF-TIME APPEAL**

---

Penelope Strong, counsel for Garrett Alan Lee, respectfully requests, pursuant to Mont.R. App. Pro 4 (6 ), that the Court permit an out-of-time appeal for Defendant/Appellant from the Judgment entered November 29, 2022, by the Thirteenth Judicial District Court, Yellowstone County, in Cause No. CR 22-0449, State v. Garrett Alan Lee.

Montana Rule of Appellate Procedure 4(6) provides, "In the infrequent harsh case and under extraordinary circumstances amounting to a gross miscarriage of justice, the supreme court may grant an out-of-time appeal."

On July 28, 2022, Mr. Lee pleaded guilty to felony sexual abuse of minors, and was represented by Attorney Tyler Dugger. On September 27, 2022, Mr. Lee was sentenced for this offense and received a 100-year sentence, with 65 years suspended, to the Montana State Prison. Exhibit A, Sentence and Judgment in

Thirteenth Judicial District Court, Yellowstone County, No. CR 22-0449, State v. Garrett Alan Lee.

The Notice of Appeal would have been due on January 28, 2023. As outlined in the affidavit of Mr. Lee, after sentencing he discussed an appeal with his counsel, and requested that an appeal be filed. No appeal was filed and no written correspondence was sent to Mr. Lee from his court appointed lawyer, confirming that he would, and had filed a notice of appeal. Or conversely, that they had discussed this issue, and Mr. Lee decided not to file an appeal.

As a result, no notice of appeal was filed, and Mr. Lee proceeded to file for sentence review, pro se, which hearing was ordered. Exhibit B, Notice of Sentence Review Hearing. Eventually, his court appointed counsel for the Sentence Review advised him of the possibility of an out of time appeal. G. Lee Affidavit, par.13.

Mont.R. App. Pro. 4 mandates that retained counsel of record in a criminal case must, after filing a notice of appeal, remain as counsel of record on appeal until and unless counsel either obtains and files with the clerk of the supreme court the client's written consent to counsel's withdrawal, or obtains a supreme court order allowing counsel to withdraw.

Moreover, the decision to file an appeal in a criminal case, is a right personal to the Defendant. In *State v. Rogers*, 2001 MT 165, ¶ 26, 306 Mont. 130, 136, 32 P.3d 724, the Montana Supreme Court stated:

“However, a defendant's right to appellate counsel must be safeguarded and allowing counsel to be the final judge of the merits of an appeal does not adequately safeguard this right. *Smith v. Robbins* (2000), 528 U.S. 259, 120 S.Ct. 746, 145 L.Ed.2d 756, 729.

The U.S. Supreme Court, in the context of whether or not defense counsel rendered the ineffective assistance of counsel, by failing to consult with a client and then file a notice of appeal in a criminal case, has noted that:

*We have long held that a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. See Rodriguez v. United States, 395 U.S. 327, 89 S.Ct. 1715, 23 L.Ed.2d 340 (1969); cf. Peguero v. United States, 526 U.S. 23, 28, 119 S.Ct. 961, 143 L.Ed.2d 18 (1999) (“[W]hen counsel fails to file a requested appeal, a defendant is entitled to [a new] appeal without showing that his appeal would likely have had merit”). This is so because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a notice of appeal is a purely ministerial task, and the failure to file reflects inattention to the defendant's wishes.” (Emphasis supplied)*

*Roe v. Flores-Ortega, 528 U.S. 470, 477, 120 S. Ct. 1029, 1035, 145 L. Ed. 2d 985 (2000)*

Here, the circumstances are such that Mr. Garrett Lee told his counsel of record he wanted to file an appeal, was not properly advised of his right to appeal, and believed that Sentence Review was his only remedy. As counsel of record, therefore, Attorney Dugger should have filed a notice of appeal for his client. As a result of the failure to abide by his client's wishes, the notice of appeal was never filed and this series of events constitutes a prima facie case of the ineffective assistance of counsel, and grounds for an out of time appeal.

Ultimately, this dereliction of duty unduly prejudiced Mr. Lee as his appeal, clearly, was never timely filed. Moreover, these particular circumstances are not a matter of mere mistake, inadvertence, or excusable neglect. As Mr. Lee's affidavit

states, he filed for sentence review first and didn't understand how the appeal process worked, or that it was his decision to make.

Consequently, to guarantee that Mr. Lee's fundamental right to appeal is protected, counsel requests an order permitting him to file an out-of-time appeal. Not permitting Mr. Lee to appeal based on these facts in this record, would constitute a gross miscarriage of justice and unduly punish the Defendant/Appellant, whom was misadvised about his right to appeal.

An affidavit from Garrett Lee in support is attached to this motion. The Attorney General's Office has been contacted and does not object.

DATED this 23<sup>rd</sup> day of August, 2023.

By: /s/ Penelope S. Strong  
Penelope S. Strong  
Attorney for Defendant/Appellant

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this PETITION FOR OUT-OF-TIME APPEAL is printed with a proportionally spaced font of Times New Roman 14 points; is double spaced; Microsoft Word 2010, and consists of 864 words, excluding the table of contents, table of authorities, certificates of service and of compliance.

DATED this 23<sup>rd</sup> day of August, 2023.

By:       /s/ Penelope S. Strong        
Penelope S. Strong  
Attorney for Defendant/Appellant

## **CERTIFICATE OF SERVICE**

I, Penelope S. Strong, hereby certify that I have served true and accurate copies of the foregoing document on August 23, 2023:

Austin Knudsen (Prosecutor)  
Montana Attorney General  
215 N. Sanders  
PO Box 201401  
Helena, MT 59620  
Representing: State of Montana  
Service Method: eService

Scott Twito  
Yellowstone County Attorney  
Service Method: eService

/s/ Julie K. Palmersheim

Julie K. Palmersheim  
Dated: August 23, 2023



FILED

11/29/2022

Terry Halpin  
CLERK

Yellowstone County District Court  
STATE OF MONTANA

By: Darren Mattem

DC-56-2022-0000449-IN

Fehr, Jessica

35.00

22-32352

EJ

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY**

STATE OF MONTANA,  
Plaintiff,

vs.

GARRETT ALAN LEE,  
Defendant.

CAUSE NO. DC 22-0449

JUDGE JESSICA T. FEHR

**JUDGMENT**

On April 18, 2022, Defendant appeared in District Court for initial arraignment.

On July 28, 2022, Defendant and Counsel appeared before the Court for a change of plea hearing. A written Acknowledgement of Waiver of Rights and Plea Agreement form was filed with the Court. Defendant entered his plea of GUILTY to SEXUAL ABUSE OF CHILDREN (FELONY).

The Court made specific findings that Defendant understood his legal and Constitutional rights, voluntarily entered his plea and was not subjected to any force, threats, or promises (other than the Plea Agreement) in making his plea.

On August 4, 2022, the Defendant filed a Sentencing Memorandum requesting that the Court find an exception to the mandatory minimum sentence based on the Defendant's mental capacity at the time of the commission of the offense for which the offender is to be sentenced, as provided for in Mont. Code Ann. § 46-18-222(2). The State objected.

On September 7, 2022, the Defendant filed another Sentencing Memorandum and argued that the sentencing enhancements colloquially known as "Jessica's Law" do not apply because the victim in this matter was fictitious as it was an undercover operation that ensnared the Defendant. The State objected. (Dckt. #20).

On September 27, 2022, Defendant appeared before the Court with Counsel Tyler T. Dugger for a hearing on Defendant's motion that the Court find an exception to the mandatory minimum sentence based on the Defendant's mental capacity at the time of the commission of the offense for which the offender is to be sentenced, as provided for in Mont. Code Ann. § 46-18-222(2). The State objected. (Dckt. #17). After hearing the testimony of Dr. Dee Woolston, PhD, and Michael Sullivan, LCSW, the

Court found that pursuant to §46-18-222(2), the Defendant's mental capacity, at the time of the commission of the offense for which the Defendant was to be sentenced, was significantly impaired, although not so impaired to constitute a defense to the prosecution, therefore the mandatory minimum does not apply to this sentence. The Court's ruling in open court was memorialized by written findings of fact and conclusions of law.

After the Court ruled on the Defendant's motion pursuant to Mont. Code Ann. § 46-18-222(2), the parties agreed to move immediately to sentencing. On the same date, September 27, 2022, the Court inquired whether Defendant had any legal cause to show why judgment should not be pronounced. No legal cause was offered.

IT IS ORDERED that for SEXUAL ABUSE OF CHILDREN (FELONY) Defendant is committed to the Montana State Prison under § 46-18-201, MCA, for ONE HUNDRED (100) YEARS WITH SIXTY-FIVE (65) YEARS SUSPENDED, to run concurrently with DC 16-0564.

IT IS FURTHER ORDERED that Defendant will receive credit for time spent in pre-trial incarceration as follows: April 14, 2022 through September 27, 2022.

IT IS FURTHER ORDERED that Defendant is designated as a Level 2 Sexual Offender under § 46-23-509(3)(b), MCA.

IT IS FURTHER ORDERED that the Defendant successfully complete sex offender treatment with a clinical provider who is in good standing with MSOTA or its equivalent and shall follow all rules and recommendations of the provider.

THE COURT FINDS, pursuant to §46-18-222(2), that the Defendant's mental capacity, at the time of the commission of the offense for which the Defendant is to be sentenced, was significantly impaired, although not so impaired to constitute a defense to the prosecution, therefore the mandatory minimum does not apply to this sentence.

IT IS FURTHER ORDERED that pursuant to §46-18-202(2) the Court imposed a TWENTY-FIVE (25) YEAR parole restriction as well as ordering successful completion of phases I & II of sex offender treatment while in custody at the Montana State Prison.

#### **RATIONALE FOR SENTENCE**

The Montana Constitution provides that "laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, and restitution for victims." Art. II, § 28. To that end, the Montana Legislature has enacted a four-prong correctional and sentencing policy intended to guide courts imposing criminal sanctions. The objectives of this policy serve to:

- a) punish each offender commensurate with the nature and degree of harm caused by the offense, and to hold the offender accountable;
- b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;
- c) provide restitution, reparation, and restoration to the victim(s) of the offense; and
- d) encourage and provide opportunities for the offender's self-improvement in order to provide rehabilitation and reintegration of the offender back into the community.



Mont. Code Ann. § 46-18-101(2). While not explicitly listed as a factor in Mont. Code Ann. § 46-18-101, any sentence passed must incorporate retribution as a component. *Rickman*, 2008 MT 142 at ¶ 26 (internal citations omitted).

Judges are granted broad discretion in determining the appropriate punishment for crimes. *City of Bozeman v. Cantu*, 2013 MT 40, ¶ 20, 369 Mont. 81, 296 P.3d 461. This discretion is subject to certain minimal requirements. Sentencing and punishment must be consistent and timely, and commensurate with the punishment imposed on other offenders for the same offenses. Mont. Code Ann. § 46-18-101(3).

While sentencing practices must provide alternatives to imprisonment for nonviolent felony offenders, violent and repeat offenders are to be punished with incarceration. Mont. Code Ann. § 46-18-101(3). Because each case is unique, a sentencing court must consider aggravating and mitigating factors in determining an appropriate sentence. Mont. Code Ann. § 46-18-101(3)(d). Such factors include the defendant's background, criminal history, character, and the nature and circumstances of his crimes. *State v. Walker*, 2007 MT 205, ¶ 21, 338 Mont. 529, 167 P.3d 879 (citing *State v. Harper*, 2006 MT 259, ¶ 22, 334 Mont. 138, 144 P.3d 826). A sentencing court may also consider "other acts, even those resulting in acquittal, or which are dismissed pursuant to plea bargain agreement." *Id.* (citing *State v. Mason*, 2003 MT 371, ¶ 23, 319 Mont. 117, 82 P.3d 903). Montana's sentencing policy emphasizes that an appropriate sentence is one which holds the offender accountable for his actions. Mont. Code Ann. § 46-18-101(3)(g). Under these factors, a just sentence balances the applicable sentencing principles against the facts of a given case, in a manner that satisfies the four stated objectives of Montana's correctional and sentencing policy.

A sentencing court may consider any other relevant evidence in determining an appropriate sentence, including the nature and circumstances of the crime; the character of the defendant; the defendant's background and history; the defendant's mental and physical condition; and any other evidence having probative force. *State v. Mason*, 2003 MT 371, ¶ 23, 319 Mont. 117, 82 P.3d 903 (citing *State v. Collier*, 277 Mont. 46, 63, 919 P.2d 376, 387 (1996)). The purpose behind this rule is to allow the Court to "consider the broad spectrum of incidents making up the background of an offender in determining the proper sentence." *Id.*

As an initial matter, the Defendant argued at sentencing that he could not be sentenced pursuant to the enhancement known as "Jessica's Law" because the case was a law enforcement sting and there was no actual victim under the age of 12. Under Mont. Code Ann. § 45-5-625(4)(a)(i), if the victim was twelve years of age or younger, and the offender was eighteen years of age or older at the time of the offense, the offender shall be punished by a term of 100 years, and a court lacks discretion to suspend or defer the first twenty-five years and the offender is ineligible for parole for those twenty-five years. The Court has reviewed the statutory construction arguments presented by the State and the legislative intent demonstrated in the record. The Court ordered at the sentencing hearing that the enhancement did apply because the question of whether the victim was in fact a twelve-year-old is irrelevant, what matters is did the Defendant believe the victim was in fact a twelve year old. It is the Defendant's intent that forms the *mens rea* for the crime. The Defendant admitted at his change of plea hearing that he "knowingly, through electronic communication, persuaded, enticed, counseled, encouraged, directed or procured a person [he] believed to be 12 years of age or younger, to engage in sexual conduct, actual or simulated..." See Plea Agreement, Dckt. #14, pg. 4, ¶ 32. The Defendant engaged in specific sexual conduct with someone he believed to be twelve years old. The loophole sought by the Defendant is unsupported by the law – and in reality, another attempt by the Defendant to manipulate the system.

At the hearing on the motion held immediately prior to sentencing, the Defendant called Dr. Dee Woolston, PhD, to testify regarding the full psychological evaluation he performed of the Defendant. The evaluation, completed on July 18, 2022, was filed with the Court. (See Dckt. #16). Dr. Woolston testified that the Defendant's IQ was between 62 and 69 based on relevant testing. Even though his full-scale IQ taken alone might not qualify the Defendant as low functioning or borderline intellectual

abilities, Woolston found that the Defendant's adaptive skills were also compromised, thus the Defendant's level of function could be more like a person with Borderline intellectual abilities. Dr. Woolston testified that the Defendant's diagnoses included Attention Deficit/Hyperactivity Disorder; unspecified learning disorder; consider intellectual disability, mild; consider autistic spectrum disorder, mild; persistent depressive disorder with low self-esteem; consider cyclothymic disorder; generalized anxiety disorder, moderate severity with significant social anxiety; and cannabis use disorder, mild. Dr. Woolston described the Defendant as impulsive, and a people pleaser with no concern of normally associated consequences. Dr. Woolston opined that the Defendant was unusually vulnerable to abuse and exploitation in a correctional setting. Dr. Woolston offered no opinions relative to the Defendant's sexual behavior as those matters were better evaluated by the psycho-sexual evaluation completed by Michael Sullivan, LCSW. Dr. Woolston testified that the Defendant did not accurately report his substance use during the interviews.

Michael Sullivan, LCSW completed his psychosexual evaluation of the Defendant on August 12, 2022. Sullivan testified at the hearing to the following:

- a. Defendant's judgment is poor. Defendant is impulsive and has executive functioning deficits.
- b. "Insight into self and others is poor. Garrett minimizes his conduct and is comfortable with dishonesty. In fact, reports from jailhouse calls indicate that he was somewhat proud of what he perceived to be his dishonesty related to this Evaluation."
- c. "A significant level of characterological disturbance is indicated. This includes indications of Schizotypal, Borderline, Avoidant, Dependent, Histrionic, Antisocial, Negativistic, and Masochistic features."
- d. "... He is uncomfortable and distant interpersonally with a tendency to engage in excessive fantasy."
- e. "... He struggles in conforming his behavior to expectations and standards. He struggles with authority. He is impulsive."
- f. "[Defendant's] low level of intellectual functioning leads to adapting poorly as an adult. Executive functioning deficits are noted, resulting in poor problem solving and impulsive decisions."
- g. "His judgment is poor, evidenced by his history of poor decisions and overall poor problem solving including poor adjustment to probation. Insight into self and others is poor. He is manipulative and comfortable with dishonesty."
- h. "The Defendant demonstrated sexually compulsive behaviors during his time at Missoula Prerelease in 2020 and completed a psychosexual evaluation/treatment amenability assessment with Christopher Quigley, LCSW."
- i. Quigley's report demonstrated that while at the Missoula Prerelease Center, the Defendant continued to make inappropriate sexual comments to female staff, including, discussing with female staff his high sex drive, disclosing he was having dreams about reaping women, and that he was previously terminated from a job for sexual harassment of a female coworker, when he touched the coworker's buttocks.
- j. Quigley included in his report that the Defendant reported multiple "hookups" in his life with men, women and threesomes. The Defendant reported he is slightly more attracted to women than men. The Defendant reported he was "definitely addicted to pornography and sex in general."
- k. Quigley recommended that the Defendant engage in intensive outpatient sex offender programming.
- l. With respect to the Quigley report and recommendations, the Defendant admitted to Sullivan he never followed up on any outpatient sex offender programming and never shared the report or recommendations with his supervising probation officer.

Sullivan designated the Defendant as a Level 2 or Moderate Risk designation for the purposes of sex-offender registration. Sullivan testified that the Defendant's treatment needs "are not appropriately served in the community. He was on Probation at the time of this sexual offense, and up to that point,

was adjusting poorly. He is most appropriately served in Montana State Prison where he should be required to enter, and complete, Phase 2 or the Intensive Treatment Phase of the sex offender treatment in place within the institution.”

In addition, the State offered extensive evidence at the sentencing hearing of the Defendant’s jail house recorded phone calls. The transcripts of the calls read into the record were filed with the Court as Docket entry 33. The statements made by the Defendant on the recorded phone calls showed clear manipulation and lies by Defendant of his identified “friends” and family. Specifically, the calls show the Defendant scheming on how to manipulate the Court to impose a reduced sentence; using allegations of sexual abuse of a girlfriend/wife’s daughter as a weapon when speaking with the girlfriend/wife to get her to do whatever the Defendant wanted while he was incarcerated (“Anything I say can put you away for a long time and you’ll never get your kid back. You realize that right?”); using a vehicle his girlfriend/wife was driving as a pawn again to get the girlfriend/wife to do what he wanted while in custody (“Tell her that you have decided you want the car back and we will give it to someone else. Make her a little afraid, I guess, or put a little scare into her.”); using another friend to help manipulate his girlfriend/wife while he was in custody; making admissions about his inability to control his sex drive (“There’s no way I’ll be able to control my sex drive.”). See Dckt. # 33.

The evidence and testimony offered at the sentencing hearing established that the Defendant is a consummate manipulator. Despite his demonstrated low IQ and struggles with independent living, he persists in high level manipulation of those within his circle of influence. The Defendant shows no hesitation to use and abuse those around him for his own benefit. As Sullivan noted, the Defendant has poor judgment, is manipulative and is comfortable with dishonesty. The Defendant failed to be completely honest with any of the evaluators in this case. The Defendant failed to disclose to anyone the Quigley evaluation and the specific recommendation in 2020 that he engage in intensive outpatient sex offender treatment. Also of note was Sullivan’s specific recommendation that the Defendant is most appropriately served in Montana State Prison where he should be required to enter, and complete, Phase 2 or the Intensive Treatment Phase of the sex offender treatment in place within the institution. It is a rare instance where the clinical professional advises the Court that a defendant is NOT amenable to treatment in the community. Sullivan’s recommendation, adopted by the Court, underscores the absolute danger that exists if the Defendant were ever allowed to be back in the community without significant sex offender treatment while in custody. The Defendant was given the opportunity to obtain intensive outpatient sex offender treatment in 2020 and made the conscious decision to ignore the recommendation.

When asked in open court if he wished to make a statement, the Defendant’s only statements to the Court were of a self-serving nature – specifically concern that he would be attacked in prison based on his small stature. The Defendant, even when faced with clear evidence of his manipulation at his sentencing hearing, continued to focus only on himself, his needs and how best to manipulate the situation to his own advantage. The Defendant requires a significant sentence to ensure he can learn empathy, compassion, understanding and to obtain a world view larger than his own needs and protection.

The record before the Court demonstrates that the Defendant’s behavior escalated from the Quigley evaluation in 2020. The Defendant’s transition to supervision in the community was abysmal and his specific predatory characteristics have simply become more prominent as demonstrated by the testimony and evidence presented at the sentencing hearing. While the Court previously made findings denying the motion that the Defendant’s victim was not a “real” victim for enhancement purposes, granting the § 46-18-222(2) exception to the mandatory minimum due to the Defendant’s mental capacity, the Court is now firmly convinced that the Defendant is a significant danger to the community without the imposition of a parole restriction and a requirement that the Defendant complete Phase 2 of his sex offender programming while in custody as recommended by Sullivan.

Therefore, as previously stated above, the Defendant is committed to the Montana State Prison under § 46-18-201, MCA, for ONE HUNDRED (100) YEARS WITH SIXTY-FIVE (65) YEARS SUSPENDED, to run concurrently with DC 16-0564. Additionally, pursuant to §46-18-202(2) the Court imposed a TWENTY-FIVE (25) YEAR parole restriction as well as ordering successful completion of phases I & II of sex offender treatment while in custody at the Montana State Prison to ensure compliance by the Defendant with the recommended treatment and to protect the community from a Defendant whose documented manipulative tactics are so stark, the Court has no reference point other than the fictional character, Keyser Soze.

### **CONDITIONS OF PROBATION**

IT IS FURTHER ORDERED that for any period of community supervision, the following conditions of probation will apply:

1. The Defendant shall be placed under the supervision of the Department of Corrections, subject to all rules and regulations of Adult Probation & Parole.
2. The Defendant must obtain prior written approval from his/her supervising officer before taking up residence in any location. The Defendant shall not change his/her place of residence without first obtaining written permission from his/her 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 his/her supervising officer or the officer's designee before leaving his/her 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 his/her supervising officer, the Defendant must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.
5. Unless otherwise directed, the Defendant must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau. The Defendant must personally contact his/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.
7. The Defendant must obtain permission from his/her 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 and parole officer may search the person, vehicle, 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 his/her supervising officer or designee. The Defendant must be cooperative and truthful in all communications and dealings 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 Officer 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, 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); §61-8-406 (DUI-alcohol); or §61-8-411 (DUI-delta-9-tetrahydrocannabinol). [§46-18-236(1)(c), MCA]
  - e. \$10.00 for court information technology fee. (§3-1-317, MCA)
  - f. 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)
14. If the Defendant is convicted of a crime listed in §46-23-502(9), MCA, he/she shall register as a sex offender. [§46-18-201(7), MCA]

15. The Defendant, required to register as a sexual or violent offender under §46-23-504, MCA, 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 will surrender to the court any registry identification card issued under the Medical Marijuana Act. [§46-18-202(1)(f), MCA]
18. The Defendant shall not abscond from supervision. Absconding is a non-compliance violation as defined in §46-23-1001(1), MCA.
19. 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.
20. The Defendant shall obtain a mental health evaluation/assessment by a state-approved evaluator, **if requested by his supervising officer**. The Defendant shall pay for the evaluation and follow all of the evaluator's treatment recommendations. **Credit shall be given for any evaluations previously completed.**
21. The Defendant shall successfully complete Cognitive Principles & Restructuring (CP&R) or similar cognitive and behavioral modification program.
22. The Defendant shall not enter any bars.
23. The Defendant shall not enter any casinos.
24. The Defendant shall not use recreational marijuana.
25. 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.
26. The Defendant shall inform the Probation & Parole Officer of all prescriptions obtained from medical personnel prior to filling them. The Defendant shall take all prescription medications as prescribed and in the manner in which they were prescribed.
27. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.
28. Should the Defendant be incarcerated, prior to parole or probation in the community, the Defendant shall enter into and complete through Phase 2 or the 'Intensive Treatment' Phase of the sexual offender treatment while in any institution.

29. While in any community, the Defendant shall enter and successfully complete sexual offender treatment with a clinical provider who is a member in good standing with MSOTA or its equivalent, and who is approved by the Probation & Parole Officer. The Defendant shall pay for the costs of the treatment and abide by all treatment rules and recommendations of the provider.
30. The Defendant shall obtain a psychosexual evaluation by a clinical provider who is a member in good standing with MSOTA or its equivalent and who is approved by the Probation & Parole Officer. The Defendant shall pay the costs of the evaluation and follow all recommendations of said evaluation.
31. The Defendant shall not have contact with any individual under the age of 18 unless accompanied by an appropriately trained, responsible adult who is aware of the Defendant's sexual conviction and is approved by the Probation & Parole Officer and sexual offender treatment provider. The Defendant shall sign a "No Contact" contract and abide by all conditions of the contract.
32. The Defendant shall not frequent places where children congregate unless accompanied by an appropriately trained, responsible adult who is aware of the Defendant's sexual conviction and is approved by the Probation & Parole Officer and sexual offender treatment provider. This includes, but is not limited to, schools, parks, playgrounds, malls, movies, fairs, parades, swimming pools, carnivals, arcades, parties, family functions, holiday festivities, or any other place or function where children are present or reasonably expected to be present. The Defendant shall obtain permission from the Officer prior to going to any of the above places.
33. The Defendant shall not access or have in his/her possession or under his/her control any material that describes or depicts human nudity, the exploitation of children, consensual sexual acts, non-consensual sexual acts, sexual acts involving force or violence, including but not limited to computer programs, computer links, photographs, drawings, video tapes, audio tapes, apps, magazines, books, literature, writings, etc., without prior written approval of the Probation & Parole Officer and therapist. The Defendant shall not frequent adult bookstores, topless bars, massage parlors, or use the services of prostitutes.
34. The Defendant shall not view television shows or motion pictures geared toward his/her sexual offending cycle, or as a stimulus to arouse deviant thoughts or fantasies (i.e., shows based on sexualization of underage girls or boys, etc.).
35. The Defendant shall not have access to the internet without prior permission from the Probation & Parole Officer and sexual offender therapist, nor can the Defendant have on any computer he/she owns any software that is intended for data elimination, encryption or hiding data. If Internet access is allowed, the Defendant must allow the Department to install rating control software and conduct random searches of the hard drive for pornography or other inappropriate material. Internet access should be for educational or employment purposes only.
36. The Defendant shall not possess or use any computer or other device with access to any on-line computer service including, but not limited to "Cloud" data storage, without the prior written

approval of the Probation & Parole Officer. The Defendant shall allow the Probation & Parole Officer to make unannounced examinations of his/her computer, hardware, and software, which may include the retrieval and copying of all data from his/her computer and computing and data storage devices. The Defendant shall allow the Probation & Parole Officer to install software to restrict the Defendant's computer access or to monitor the Defendant's computer access. The Defendant shall not possess encryption or stenography software. The Defendant shall not utilize software designed to eliminate traces of internet activity. The Defendant shall provide records of all passwords, internet service, and user identifications (both past and present) to the Probation & Parole Officer and immediately report changes. The defendant shall sign releases to allow the Probation & Parole Officer to access phone, wireless, internet, and utility records.

37. The court shall designate the Defendant as a Level 2 offender based on the psychosexual evaluation and other pertinent documentation. (§46-23-509, MCA)
38. The Defendant's chaperone/supervisor shall sign a statement of responsibility and be approved by both the Probation & Parole Officer and the treatment provider.
39. The Defendant shall not be involved in any type of employment, service or recreational pursuit which involves the supervision of children. Under no circumstances should the Defendant be in a position of power and authority over children.
40. The Defendant shall be subject to reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses. [§46-18-255(1), MCA]
41. The Defendant shall not access "900" number telephone sex lines and shall have a "900" number block on his/her telephone.
42. The Defendant shall own, possess, or utilize cell phones which have internet or digital photographic capability unless approved by his Probation Officer and treatment provider.
43. The Defendant shall not own or possess digital photo or video equipment unless approved by his Probation Officer and treatment provider.
44. If cell phone use is allowed, all bills and records shall be made available to the Probation & Parole Officer.
45. The Defendant shall remain in Aftercare or Relapse Prevention Class for the entirety of his/her supervision unless released at the discretion of the Probation & Parole Officer and therapist.
46. The Defendant shall reenter treatment at any time if deemed appropriate by the Probation & Parole Officer and therapist.
47. The Defendant shall submit to annual polygraph testing.
48. The Defendant shall not reside in a home with children.



49. The Defendant shall not date, live with, or otherwise be aligned with any person with children under the age of 18.

50. The PSI report shall be released per Court Order 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 Defendant fails to comply with any of the above-listed conditions, the Court will issue a Bench Warrant of Arrest, apprehend the Defendant and require him to appear before the Court for further proceedings.

Sentence was imposed for the following reasons:

1. The Court considered the contents and recommendation of the pre-sentence report along with any corrections / modifications made at Sentencing Hearing.
2. The Court considered testimony presented at the Sentencing Hearing.
3. The Court considered Defendant's statement presented at the Sentencing Hearing.
4. The Court considered the following criteria for sentencing: violent circumstances / facts of the offense, Defendant's age, Defendant's lack of employment, Defendant pled Guilty, Defendant's criminal history consisting of felony and misdemeanor convictions which indicate little or no respect for the rules / laws of society and amount of pre-trial incarceration / detention time served along with the recommendations / arguments of counsel.
5. The Court, for the above-stated reasons, finds the interest of justice and the needs of public truly require the level of security provided by imprisonment; needs of Defendant better served in the state prison; imprisonment of the Defendant will not create an excessive hardship on the Defendant or the Defendant's family; this type of sentence / commitment provides numerous programs to assist Defendant along with the authority to place offender in community-based programs upon eligibility.

The Bond, if any, is exonerated in this matter only but must remain active in any other case where that bond was ordered concurrent.

Pursuant to § 46-8-113, MCA, if you were ordered to pay all or a portion of the cost of Public Defender representation as a condition of this Judgment - payments can be made online at <http://svc.mt.gov/opd/ClientPayments> OR by mailing a money order, certified check or cashier's check payable to OPD to Office of the State Public Defender, 44 W. Park Street, Butte, MT 59701. Please include your District Court case number, address and phone number with payment.

If the written Judgment differs from the sentence the Judge pronounced orally, then the State or Defendant has only One Hundred Twenty (120) days to contest the written Judgment as set forth in § 46-18-116, MCA. If no party contests the written judgment within One Hundred Twenty (120) days, the written Judgment is presumed correct.

DONE IN OPEN COURT on September 27, 2022.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

cc: YCAO [cadocs@yellowstonecountymt.gov](mailto:cadocs@yellowstonecountymt.gov) - mc  
Billings Police Department (C&O 22-023463)  
Probation & Parole [CORP&PREGIV@mt.gov](mailto:CORP&PREGIV@mt.gov)  
Defense - Tyler T. Dugger

Sentence Review Division  
301 South Park, Suite 328  
P.O. Box 203005  
Helena, MT 59620-3005  
Phone: (406) 841-2976  
Email: [shellysmith@mt.gov](mailto:shellysmith@mt.gov)



FILED  
03/07/2023  
SENTENCE REVIEW DIVISION  
OF THE SUPREME COURT

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA

STATE OF MONTANA,	)	Cause No. DC-22-449
	)	
Plaintiff,	)	Yellowstone County District Court
	)	Montana Thirteenth Judicial District
-vs-	)	
	)	
GARRETT ALAN LEE,	)	NOTICE OF SENTENCE REVIEW
	)	HEARING
Defendant.	)	

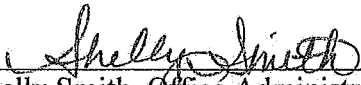
The Application of the above-named Defendant will be heard on Thursday, May 4, 2023 at 8:40 a.m., or as soon thereafter as the matter may be heard, before the Sentence Review Division. The hearing will be conducted by Zoom videoconference. The Sentence Review Division's Office Administrator will contact Correctional Staff at the appropriate facility to make the necessary arrangements for the Defendant to appear by video for his hearing.

The Defendant's attorney will appear by videoconference. The sentencing Judge and the attorney for the State may also appear by videoconference or by teleconference for the hearing. The attorney for the State or the sentencing Judge who will not appear for the hearing and who wishes to be heard on the Application shall submit a memorandum not less than ten (10) days before the hearing by electronic service to the Division, with service of the memorandum on the Defendant and Defendant's attorney.

All parties attending the hearing by Zoom videoconference or by teleconference will notify the Division by email not less than ten (10) days in advance of the hearing.

Absent good cause shown, all motions and requests for continuance must be filed by electronic service to the Sentence Review Division's Office Administrator at the email address noted above no later than ten (10) days in advance of the hearing.

DATED this 7<sup>th</sup> day of March, 2023.

  
Shelly Smith, Office Administrator  
SENTENCE REVIEW DIVISION

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing NOTICE OF SENTENCE REVIEW HEARING by depositing the same in the U.S. Mail, postage prepaid, or via electronic service this 7<sup>th</sup> day of March, 2023, to the following:

Clerk of District Court  
Yellowstone County  
P.O. Box 35030  
Billings, MT 59107  
*Via email*

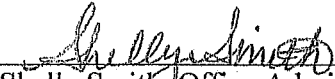
Sarah L. Hyde, Deputy Co. Attorney  
Yellowstone County Attorney's Office  
217 North 27th Street  
Billings, MT 59101  
*Via email*

Office of State Public Defender  
502 S. 19th Ave., Ste 211  
Bozeman, MT 59718  
*Via email*

Hon. Jessica Fehr  
13th Judicial District  
P.O. Box 35029  
Billings, MT 59107  
*Via email*

Penelope S. Strong  
Attorney at Law  
2517 Montana Avenue  
Billings, MT 59101  
*Via email*

Garrett Alan Lee #3020944  
Montana State Prison  
400 Conley Lake Road  
Deer Lodge, MT 59722

  
\_\_\_\_\_  
Shelly Smith, Office Administrator  
SENTENCE REVIEW DIVISION

## **CERTIFICATE OF SERVICE**

I, Penelope S. Strong, hereby certify that I have served true and accurate copies of the foregoing Petition - Out of Time Appeal to the following on 08-23-2023:

Sarah L. Hyde (Govt Attorney)  
PO Box 35025  
Billings MT 59107  
Representing: State of Montana  
Service Method: eService

Electronically Signed By: Penelope S. Strong  
Dated: 08-23-2023