

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SHANE MEDORE MAGGI,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Third Judicial District Court,
Powell County, the Honorable Ray J. Dayton, Presiding

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STATEMENT OF THE ISSUES

Whether the District Court imposed an illegal life sentence for Aggravated Assault?

STATEMENT OF THE CASE

On February 11, 2021, the State charged Maggi with Aggravated Assault, a felony in violation of Mont. Code Ann. § 45-5-202 (2017),¹ Assault with a Weapon, a felony in violation of Mont. Code Ann. § 45-5-213 (2017), and Possession of a Deadly Weapon by a Prisoner, a felony in violation of Mont. Code Ann. § 45-8-318 (2017). (DC Doc. 5). The State provided notice of a life sentence enhancement for crimes committed “while in official detention” under Mont. Code Ann. § 46-18-220 for the Aggravated Assault allegations, as well as mandated consecutive sentences for crimes committed “while imprisoned in a state prison.” (DC Doc. 5, p. 2). Notice was also separately provided to classify Maggi as a “persistent felony offender,” relying on seven previous felony convictions over a near twenty-year period. (DC Doc. 3).

On May 16, 2022, the District Court sentenced Maggi to life imprisonment for Aggravated Assault, fifteen years for Assault with a

¹ An alternative count of Aggravated Assault by Accountability was pled, but later amended out in November of 2021. (DC Doc. 62).

Weapon, and ten years for Possession of a Deadly Weapon by a Prisoner, all consecutive. (Sent. Tr., p. 45-46; DC Doc. 103, p. 4-5; App. A).

Maggi timely appeals. (DC Doc. 104).

STATEMENT OF THE FACTS

This matter arose out of a brawl between three inmates at the Montana State Prison. A Powell County jury found Maggi guilty of all three charges while “in official detention” and “imprisoned in a state prison” during the commission of the offenses. At sentencing, the State informed the District Court that “[t]his is a first time PFO.” (Sent. Tr., p. 5). Under a mistaken belief that the Montana Legislature limited the District Court’s sentencing discretion, the District Court relied on Mont. Code Ann. § 46-18-220 in handing Maggi a life sentence for Aggravated Assault, with no time suspended and parole restrictions. (Sent. Tr., p. 45). The District Court found “plenty of [] prior felonies” and each “recent enough” for the persistent felony offender designation to apply. (Sent. Tr., p. 45).

The above sentences are imposed after consideration of the legislature’s strong requirement to protect inmates. The legislature has required a life sentence to disincentivize the

exact crimes that occurred in this matter. A life sentence is proportional to the severity of the crimes committed. The Court makes this determination after considering the violence displayed, the Defendant's criminal history, his designation as a Persistent Felony Offender, and his qualification for a mandatory life sentence.

(DC Doc. 103, p. 5-6).

STANDARD OF REVIEW

This Court reviews criminal sentences *de novo* for legality (*i.e.*, whether the sentencing court had statutory authority to impose the sentence; whether the sentence falls within the parameters set by the applicable sentencing statutes; and whether the court adhered to the affirmative mandates of the applicable sentencing statutes) and correctness (*i.e.*, whether the sentencing court interpreted the law correctly). *State v. Webb*, 2005 MT 5, ¶ 8, 325 Mont. 317, 106 P.3d 521; *State v. Ariegwe*, 2007 MT 204, ¶ 174, 338 Mont. 442, 167 P.3d 815.

SUMMARY OF THE ARGUMENT

Mont. Code Ann. § 46-18-220 requires compliance with Title 46, Chapter 18, Part 3 (“Death Penalty”) for life sentences. This matter was the first instance of a Montana court finding Maggi to be a persistent felony offender. The Montana Legislature mandates life

sentences for the most serious of circumstances. For example, under Mont. Code Ann. § 46-18-303(3)(b), the defendant must have been previously designated a persistent felony offender and is currently being sentenced for a violent offense while in official detention. As *State v. Running Wolf*, 2020 MT 24, 398 Mont. 403, 457 P.3d 218 instructs, sentencing courts cannot simultaneously find a defendant to be a persistent felony offender and use that newly found designation as a basis to impose a life sentence. The District Court applied the law incorrectly.

ARGUMENT

Life sentences for aggravated assault require a previous finding that the defendant is a persistent felony offender

Before the State could seek a life sentence against Maggi for aggravated assault, a crime that carries a 20-year maximum sentence, it was required to meet strict pleading requirements. As the State provided in its notice, Maggi was previously convicted of the requisite number of violent felonies. (DC Doc. 4, p. 1-2). However, Maggi had yet to be designated a persistent felony offender with his previous convictions. The State recognized such:

If Defendant is found guilty of the present charge or any felony offense in this matter, the State *intends to seek treatment of the accused as a persistent felony offender* and reserves the right to request the maximum enhanced sentence allowed by law for such designation.

(DC Doc. 4, p. 2). While Maggi was serving sentences for violent felony offenses prior to the circumstances giving rise to this case, Maggi had yet to be designated a persistent felony offender by any Montana sentencing court.

Enhancing acts and their penalties must be pled. Mont. Code Ann. § 46-1-401(1)(a). If the matter is taken to trial, the jury must unanimously find that the enhancing act occurred beyond a reasonable doubt. Mont. Code Ann. § 46-1-401(1)(b); *c.f.*, *State v. Tam Thanh Le*, 2017 MT 82, ¶ 10, 387 Mont. 224, 392 P.3d 607 (citing *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)).

Enhancing acts are acts “not included in the statutory definition of the elements of the charged offense and that allows or requires a sentencing court to add to, as provided by statute, a penalty provided by statute for the charged offense[.]” Mont. Code Ann. § 46-1-401(3). “[A]ggravating circumstances contained in 46-18-303 are enhancing acts[.]” Mont. Code Ann. § 46-1-401(3). Prior convictions for penalty enhancements

are exempt from these requirements. Mont. Code Ann. § 46-1-401(4); *Tam Thanh Le*, ¶ 10 (citing *Apprendi*, 530 U.S. at 490, 120 S.Ct. at 2362-63).

Here, no dispute is made that the State did not properly plead Maggi's previous violent felony convictions, (DC Doc. 5), nor did the jury fail to find beyond a reasonable doubt the additional statutory elements, (DC Doc. 80, p. 2). What is at issue is that the District Court failed to comply with Mont. Code Ann. § 46-18-301, *et al.*

The statute at issue in this case, Mont. Code Ann. § 46-18-220, requires "death or life imprisonment *as provided in 46-18-301 through 46-18-310*[" (emphasis added), for an aggravated assault conviction committed "while in official detention[.]" For a life sentence to be lawful, the court must determine at sentencing "the existence or nonexistence of the [aggravating and mitigating] circumstances set forth in 46-18-303 and 46-18-304 for the purpose of determining the sentence to be imposed." Mont. Code Ann. § 46-18-301(1). The court "may impose a sentence of imprisonment for life" if at least one aggravated circumstance is present. Mont. Code Ann. § 46-18-305. By statute, aggravated assault qualifies as an aggravated circumstance if,

inter alia, “committed while in official detention . . . by an offender who has been *previously*: . . . found to be a persistent felony offender[.]”

Mont. Code Ann. § 46-18-303(3)(b).

For a sentencing court to designate an individual as a persistent felony offender, the defendant must have previously been convicted of a felony conviction prior to the commission of the current offense.

Running Wolf, ¶ 17 (citing Mont. Code Ann. § 46-18-501 (2015)). *See also* Mont. Code Ann. § 46-1-202(18) (2021) (defining the term “persistent felony offender” to mean anyone previously convicted of two separate felonies and who is presently being sentenced for a third felony committed on a different occasion than either of the first two felonies[.]). One of the previous felonies (*i.e.*, a “sentence of imprisonment in excess of 1 year [which] could have been imposed[.]”) must be a sexual or violent offense, with less than 5 years between the present offense and the most recent felony conviction or release from prison or parole, and the offender had not been pardoned or the conviction set aside. Mont. Code Ann. § 46-1-202(18)(a)-(c). *See also* Mont. Code Ann. § 46-18-502(2)(a)-(c). In *Running Wolf*, ¶ 5, Running Wolf was sentenced contemporaneously on two separate felony DUI

offenses, with the sentencing court relying on one to enhance the sentence imposed on the second. This Court reversed the district court's sentence because the Montana Legislature plainly stated that a persistent felony offender designation "requires the existence of a felony conviction before the commission of the principal offense to effectuate a valid PFO designation." *Running Wolf*, ¶ 30.

Here, the District Court incorrectly sentenced Maggi to life imprisonment for aggravated assault. The Montana Legislature mandates a life sentence for aggravated assault, among other offenses, "as provided" in Montana's death penalty statutory scheme. Mont. Code Ann. § 46-18-220. A life sentence becomes permissible so long as the sentencing court does not impose a death sentence and at least one aggravating circumstance is present. Mont. Code Ann. § 46-18-305. The only aggravating circumstance applicable here requires an offender to have been previously found, *in the past*, to be a persistent felony offender. Mont. Code Ann. § 46-18-303(3)(b).

At sentencing, a Montana court had yet to find Maggi a persistent felony offender. The State acknowledged such. (Sent. Tr., p. 5; DC Doc 4, p. 2). In other words, no aggravating circumstance was present to

warrant a life sentence for aggravated assault. Unlike *Running Wolf*, the circumstances were present to designate Maggi as a persistent felony offender at sentencing. However, like *Running Wolf*, it was error to rely on this newly found designation as an aggravating circumstance to impose an enhanced, life sentence. The District Court was incorrect that the Montana Legislature foreclosed the court's discretion. Instead, the District Court incorrectly interpreted the law. As a result, the District Court failed to comply with applicable sentencing statutes, making the life sentence for aggravated assault unlawful. This Court should remand this matter for Maggi to be resentenced in accordance with the applicable sentencing parameters of Mont. Code Ann. § 45-5-202 "for a term not to exceed 20 years."

CONCLUSION

The District Court was incorrect that the Montana Legislature mandated a life sentence under these circumstances. Maggi requests this matter to be remanded back to District Court for sentencing in accordance with the Supreme Court's order and opinion.

Respectfully submitted this 11th day of September, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1,762, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Joshua James Thornton
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APPENDIX

Judgment.....App. A

CERTIFICATE OF SERVICE

I, Joshua James Thornton, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 09-11-2023:

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