

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-58

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MICHAEL ANTHONY PARKER,

Defendant and Appellant.

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

The parties, in accordance with M. R. App. P. 16(5), stipulate and move for an order remanding this proceeding to the district court for a re-sentencing hearing. Appellant Michael Parker asserts the district court sentenced him to an illegal sentence when it sentenced him, for an aggravated assault conviction, to fifteen years to the Department of Corrections (DOC), with five years suspended. (Doc. 138 at 2.) The court explained that it wanted Mr. Parker to receive secure chemical dependency treatment through a DOC placement. (Sentencing Hearing

(1/13/22) Transcript (Tr.)¹ p. 238.) The court further recommended Mr. Parker complete treatment with a focus on domestic violence and complete a pre-release program. (Tr. p. 238.)

Pursuant to Mont. Code Ann. §46-18-201(3)(a)(iv)(A), a sentence to the DOC requires that all but five years of the commitment be suspended. A sentence not based on statutory authority is an illegal sentence. *State v. Burch*, 2008 MT 118 ¶ 12, 342 Mont. 499, 182 P. 3d 66.

Without agreeing with all the arguments advanced by Mr. Parker for dismissal and remand, the Attorney General's Office, after consultation with the Cascade County Attorney's Office, in the interests of justice and judicial economy, concedes under the particular facts presented in this record that Mr. Parker's sentence is illegal. The parties further stipulate that the above-entitled appeal should be remanded to the District Court with instructions to re-sentence Mr. Parker, after a hearing, during which both parties are allowed to make their respective sentencing recommendations.

¹ The trial transcript and sentencing hearing transcript were filed with this Court as a combined transcript.

Counsel for Appellant has personally spoken with the Appellant about this stipulation, and the Appellant has agreed to pursue this course of action.

Appellant agrees to the voluntary dismissal of the remainder of this appeal with prejudice.

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

Respectfully submitted this 30 day of October, 2023.

By: Kristina Neal 10/30/23
KRISTINA NEAL DATE
Assistant Appellate Defender
Counsel for Appellant

By: Michael Anthony Parker 10-24-23
MICHAEL ANTHONY PARKER DATE
Defendant/Appellant

By: Tammy Plubell 10/30/23
TAMMY PLUBELL DATE
Assistant Attorney General
Counsel for Appellee

CERTIFICATE OF SERVICE

I, Kristina L. Neal, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 10-30-2023:

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Electronically signed by Kim Harrison on behalf of Kristina L. Neal
Dated: 10-30-2023