

Brendal IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 22-0364

STATE OF MONTANA,

Plaintiff and Appellee,

v.

SHANE MEDORE MAGGI,

Defendant and Appellant.

BRIEF OF APPELLEE

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUE.....1

STATEMENT OF THE CASE.....1

STATEMENT OF THE FACTS2

SUMMARY OF THE ARGUMENT8

ARGUMENT10

I. Standard of Review.....10

II. The district court had authority to impose a life sentence upon Maggi
for aggravated assault committed while in official detention10

A. Part 3 did not apply since the State did not pursue the
death penalty.....14

B. Even if Part 3 applied to Maggi, the district court had the
authority to impose a life sentence.....18

C. If the district court lacked authority to impose a life sentence for
Count I under Mont. Code Ann. § 46-18-220, the remedy is to
remand the case for a new sentencing hearing.....22

CONCLUSION.....23

CERTIFICATE OF COMPLIANCE.....24

TABLE OF AUTHORITIES

Cases

<i>City of Missoula v. Fox</i> , 2019 MT 250, 397 Mont. 388, 450 P.3d 898	15
<i>City of Whitefish v. Curran</i> , 2023 MT 118, 412 Mont. 499, 531 P.3d 547	10, 15, 21
<i>In re U.A.C.</i> , 2022 MT 230, 410 Mont. 493, 520 P.3d 295	15
<i>Mont. Vending, Inc. v. Coca-Cola Bottling Co.</i> , 2003 MT 282, 318 Mont. 1, 78 P.3d 499	16
<i>State v. Brendal</i> , 2009 MT 236, 351 Mont. 395, 213 P.3d 448	16
<i>State v. Heafner</i> , 2010 MT 87, 356 Mont. 128, 231 P.3d 1087	22
<i>State v. Heath</i> , 2004 MT 126, 321 Mont. 280, 90 P.3d 426	15
<i>State v. Hicks</i> , 2006 MT 71, 331 Mont. 471, 133 P.3d 206	22
<i>State v. Johnson</i> , 2010 MT 288, 359 Mont. 15, 245 P.3d 1113	22
<i>State v. Running Wolf</i> , 2020 MT 24, 398 Mont. 403, 457 P.2d 218	<i>passim</i>

Other Authorities

Montana Code Annotated

§ 1-2-101	14, 17
§ 1-2-102	14, 17
§ 1-3-233	15
§ 45-2-101	11, 13
§ 45-5-202(2)	11
§ 45-5-202(3) (1993)	18
§ 45-5-303(2) (2009)	18
§ 46-1-202(18)	13, 20
§ 46-1-401	8, 11, 17, 18
§ 46-1-401(1)(a)	12
§ 46-1-401(1)(b)	12
§ 46-1-401(2)	12
§ 46-18-219	10, 11
§ 46-18-219(1)(a)	11
§ 46-18-219(1)(b)	11
§ 46-18-219(2)	11
§ 46-18-220	<i>passim</i>
§ 46-18-222	5, 10, 11
§ 46-18-301 through 46-18-310.....	11, 13
§ 46-18-301	8, 13, 15
§ 46-18-301(1)	15
§ 46-18-302(2)	15
§ 46-18-303	<i>passim</i>
§ 46-18-303(3)	13
§ 46-18-303(3)(b)	9, 20
§ 46-18-304	16
§ 46-18-305	<i>passim</i>
§ 46-18-501 (2015)	13
§ 46-23-217	3, 21

STATEMENT OF THE ISSUE

Whether the district court imposed a legal sentence when it sentenced Maggi to life imprisonment for committing aggravated assault in the Montana State Prison.

STATEMENT OF THE CASE

While an inmate at Montana State Prison (MSP), Shane Medore Maggi was charged with aggravated assault, assault with a weapon, and possession of a deadly weapon by a prisoner. (Docs. 1, 4-5.) In the charging documents and trial brief, the State advised Maggi that since the alleged aggravated assault occurred while he was in official detention, if he was convicted of that offense, Mont. Code Ann. § 46-18-220 mandated that he be sentenced to life in prison. (Docs. 5, 46, 48, 62.)

The jury found Maggi guilty of all three offenses and, further, found that Maggi committed the offenses while in official detention. (12/9/21 Tr. at 815-17; Doc. 80.) The district court sentenced Maggi as follows: Count I, life in prison; Count II, 15 years in prison; and Count III, 10 years in prison. (5/16/22 Tr. (Tr.); Doc. 103.) The court ordered these terms to run consecutively to one another and consecutively to other sentences Maggi was currently serving, with the exception of his sentence in Cause No. DC-20-003. (*Id.*)

STATEMENT OF THE FACTS

Maggi began committing felony assaults in 1994 and was convicted of two aggravated assaults in 2001 as a result. (Docs. 3, 84.) Maggi was convicted of additional felonies once released from prison, including failure to register as a violent offender in 2007, and assault with a weapon and aggravated kidnapping in 2015. (*Id.*) In 2017, Maggi was convicted of possessing a deadly weapon in prison and conspiracy to transport contraband. (*Id.*) Accordingly, Maggi has been an inmate at MSP for most of his life. (*Id.*)

On January 19, 2019, Maggi and a fellow MSP inmate, Michael Fourhorns, attacked another inmate, Wesley Smith, in Smith's cell. (Doc. 1; 12/6/21 through 12/9/21 Tr.) During the assault, Maggi stabbed Smith with a broken pen, causing puncture wounds to Smith's arm, chest, and head. (*Id.*) In addition to cuts and bruises, Smith suffered a fractured facial bone. (*Id.*) When Maggi was searched after the assault, he turned over a broken razor handle. (*Id.*) In a recorded phone conversation with his mother, Maggi told her that he and Fourhorns assaulted Smith because he had been disrespectful. (*Id.*) When his mother asked how Smith was, Maggi replied, "Who cares?" (*Id.*)

In December 2019, Maggi was again found in possession of a deadly weapon in MSP and was accused of conspiring to transfer contraband. (Docs. 3, 84; Tr. at 13-14.) As a result, he was charged in Third Judicial District Court

Cause No. DC-20-003 with those offenses and, in April 2020, he was sentenced to a net prison term of ten years with five suspended. (*Id.*)

In February 2021, the State charged Maggi with the following felonies related to the events of January 19, 2019: Count I, aggravated assault; Count II, assault with a weapon; and Count III, possession of deadly weapon by prisoner. (Docs. 5, 46, 62.)

In the Information and two Amended Informations the State included the following language relative to Count I, aggravated assault:

Pursuant to Mont. Code Ann. § 46-18-220, a defendant convicted of Aggravated Assault that was committed while in official detention shall be sentenced to death or life in prison. The State provides notice it seeks this sentence enhancement but does not seek the death penalty in this matter.

(Docs. 5, 46, 62.) In the Information and two Amended Informations the State also included the following language relative to all three counts:

Pursuant to Mont. Code Ann. § 46-23-217, any conviction for a crime committed while the person is in a state prison must be served consecutive to the underlying sentence; the State seeks this penalty enhancement.

(*Id.*)

Prior to the omnibus hearing, the State filed notice of intent to designate Maggi as a PFO. (Doc. 3.) In its first motion to amend the information, the State asserted that it continued to “seek the [PFO] designation for Counts II and III.”

(Doc. 44.)

The parties stipulated to certain facts that were read to the jury as part of the State's case-in-chief. (12/8/21 Tr. at 495.) The parties agreed that at all times relevant to the offenses charged in this case, Maggi was "a person committed to a State Prison, in a State Prison in official detention, and subject to official detention," and that Smith suffered serious bodily injury. (*Id.*) Maggi advanced a "defense of others" defense, but was convicted of all three counts following a four-day jury trial. (Doc. 80; 12/9/21 Tr. at 815-17.) On the verdict form, the jury specifically found that the State had proved Maggi committed aggravated assault while "in official detention." (*Id.*) The verdict form also included specific findings that the State had proved Maggi committed all three offenses "while imprisoned in a state prison." (*Id.*)

Maggi refused to participate in the presentence investigation report (PSI) process. (Doc. 84; Tr. at 8-15.) The PSI writer reported that Maggi's risk assessment from 2020 indicated he was "VERY high in risk of recidivism" and noted that this case constituted his fifth violent assault conviction and third conviction for possessing a dangerous weapon in a detention facility. (*Id.*)

At the sentencing hearing, the State confirmed the following: all three counts had a mandatory consecutive sentence enhancement; Count I was a mandatory life sentence; and the "other two counts have a PFO designation." (Tr. at 4-5, 27.) The State recommended the following sentences: Count I, mandatory

life sentence; Count II, 100-year term of imprisonment; and Count III, 100-year term of imprisonment. (Tr. at 22-23.) The State further recommended these three counts run concurrently to each other, but consecutively to the sentences Maggi was currently serving. (*Id.*) The State did not request any parole restrictions, but argued that none of the exceptions to the mandatory minimums at Mont. Code Ann. § 46-18-222 applied to Maggi. (*Id.* at 25, 27.)

Maggi argued that the exception to the mandatory minimum at subsection (3) applied to his case, asserting that anyone in prison is acting under “unusual substantial duress” and claimed he had acted with justifiable use of force in defending his friend when he assaulted Smith. (Tr. at 31-32, 37.) Maggi further suggested that nothing in Mont. Code Ann. § 46-18-220 prohibited the court from suspending part of the “life sentence.” (*Id.* at 33-34.)

Maggi ultimately asked the court to impose a sentence that would give him the possibility of a future outside of MSP, suggesting something in the “ten or less range.” (Tr. at 37-38.) Finally, Maggi pointed out that since these offenses occurred prior to the December 2019 offense in Cause No. DC-20-003 for which he was sentenced in April 2020, any sentence imposed in this case should not be ordered to run consecutively to Cause No. DC-20-003. (*Id.* at 30-31, 38-40.)

In pronouncing its reasons for Maggi's sentence, the district court observed Smith was lucky to be alive and believed that Maggi's actions exemplified the reason the Legislature created the mandatory life sentence for aggravated assaults committed in prison. (Tr. at 42-45.) The court referenced seeing evidence presented at trial that included Maggi "plunging that device, presumably the pen, into [Smith's] back" and continuing to kick at Smith while he was helpless on the ground. (*Id.*)

The court sentenced Maggi to life in prison for Count I with "no time suspended [and] no parole restriction" so he would be eligible for parole in 25-30 years. (Tr. at 42-45.) For Count II, the court sentenced Maggi to 15 years at MSP after explaining that

without a PFO [assault with a weapon] would be 2 to 20 [years]. Minimum 2, maximum 20. Maggi has plenty of uh, prior felonies, recent enough uh, to, you know, [meet] the, the criteria for, for a PFO [designation], but I'm going to try to stay within the sentencing range of the underlying statute in any event.

(*Id.* at 45-46.) Similarly, for Count III, the court imposed a 10-year term at MSP.

(*Id.*) Finally, the court ordered each count to run consecutively to one another and consecutively to Maggi's other underlying sentences, except for Cause No. DC-20-003. (*Id.*)

In further expressing its rationale for the sentences imposed, the court pointed to

the very violent nature of the offense that led to these three convictions, uh your criminal history, uh of course your qualification for a life sentence uh, under the statute. Um, I acknowledge that you are a PFO, and I don't know whether the Judgment would be best to indicate that he's sentenced as a PFO. I guess, I guess that would be the most accurate. But uh, 15 and 10. I think deterrence is a major reason for the sentence. You know, to deter you and deter others similarly situated from engaging in this kind of behavior uh, particularly at the prison.

(*Id.* at 46-47.)

In the court's written judgment and sentence, it noted that Maggi was designated a PFO for Counts II and III. (Doc. 103 at 4.) Additionally, the court set forth the following reasons for the sentences:

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 [c]ourt 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. These sentences emphasize deterrence of these behaviors inside of the prison setting. This sentence does not interfere with rehabilitation of Defendant, however, it is this [c]ourt's determination that rehabilitation must be done in a custodial setting.

The [c]ourt has further imposed the foregoing sentences after consideration of the testimony and evidence at trial, the testimony at the sentencing hearing, and the statements in [c]ourt of Defendant, his counsel, and counsel for the State. The sentence (1) takes into account the nature of the offense; (2) takes into account Defendant's age and criminal history; (3) offers Defendant an opportunity for

rehabilitation consistent with the sentencing laws and policies of the State of Montana; (4) provides appropriate punishment; (5) provides a deterrent to similar criminal behavior; and (6) protects society.

(Id. at 5-6.)

SUMMARY OF THE ARGUMENT

The district court had the authority to impose a life sentence pursuant to Mont. Code Ann. § 46-18-220 because the State complied with the provisions set out at Mont. Code Ann. § 46-1-401. Contrary to Maggi's argument on appeal, the district court was not required to make findings relative to Title 46, chapter 18, part 3 (hereinafter, Part 3), since the State did not pursue the death penalty. When considered as a whole, the plain language of those provisions does not describe the process of choosing between life in prison and the death penalty; rather, it establishes the process for determining if a sentence of death is warranted. Here, the State made it clear it was not seeking the death penalty, but only life in prison. Thus, the reference to Mont. Code Ann. §§ 46-18-301, et al, in Mont Code Ann. § 46-18-220 was inapplicable and did not restrict the district court's authority to sentence Maggi to prison for life for Count I.

Nevertheless, even if this Court finds that Part 3 must be complied with in order to impose any sentencing enhancement under Mont. Code Ann. § 46-18-220, the record here would have supported imposition of a life sentence. Under Mont.

Code Ann. § 46-18-305, once a district court declines to impose a death penalty, it is given the discretion to impose a life sentence if one of the aggravating factors at Mont. Code Ann. § 46-18-303 exists. Here, since the death penalty was not requested, the district court would not have imposed it and, thus, would consider imposing either a life sentence or other term of imprisonment. Next, the court could have found the existence of an aggravating factor under Mont. Code Ann. § 46-18-303(3)(b) because Maggi committed aggravated assault while in official detention and Maggi's criminal history includes the necessary prior felony convictions.

Subsection (3)(b) requires that the sentencing court "find" that the offender met the definition of PFO, which the district court could have done in this case because Maggi's prior felony convictions occurred prior to the commission of the instant offense and included offenses against a person that carried mandatory minimum sentences of two years. Unlike the PFO definition that requires a previous *conviction*, Mont. Code Ann. § 46-18-303(3)(b) applies when the court "previously found" the offender was a PFO, which would occur at the sentencing hearing. Since the PFO definition already includes the temporal requirement of a prior conviction, it would lead to absurd results to also require a "finding" that an offender meets the definition of PFO prior to the commission of the offense at issue. Thus, even if this Court concludes Part 3 must be "complied with" to

impose a life sentence here, the district court possessed such authority under both Mont. Code Ann. § 46-18-220 and § 46-18-305.

Finally, if this Court concludes the district court did not have the authority to impose a life sentence upon Maggi for Count I, the proper remedy is to remand the case to the district court for resentencing on the entire case because striking the life sentence for Count I would impact the entire sentence.

ARGUMENT

I. Standard of Review

This Court will consider a sentence of longer than one year only for legality, which presents a question of law that is reviewed *de novo*. *State v. Running Wolf*, 2020 MT 24, ¶ 7, 398 Mont. 403, 457 P.2d 218 (citation omitted). A sentence is legal when it falls within the statutory parameters, the court had statutory authority to impose the sentence, and the court followed the affirmative mandates of the applicable sentencing statutes. *City of Whitefish v. Curran*, 2023 MT 118, ¶ 13, 412 Mont. 499, 531 P.3d 547 (internal quotations and citations omitted).

II. The district court had authority to impose a life sentence upon Maggi for aggravated assault committed while in official detention.

A person convicted of aggravated assault may be fined up to \$50,000 and/or incarcerated for up to 20 years “except as provided in 46-18-219 and 46-18-222.”

Mont. Code Ann. § 45-5-202(2). Montana Code Annotated § 46-18-219 contains circumstances that mandate when a life sentence without parole must be imposed, while Mont. Code Ann. § 46-18-222 sets out exceptions to mandatory minimums.

Although Maggi had the requisite prior convictions for the State to have pursued mandatory life without parole under Mont. Code Ann. § 46-18-219(2),¹ relative to Count I, aggravated assault, the State gave notice of its intent to rely on the sentence enhancement of life in prison found at Mont. Code Ann. § 46-18-220. In its notices, the State specifically asserted it was not pursuing the death penalty.

The enhancement statute advanced by the State provides that:

An offender convicted of having committed attempted deliberate homicide, aggravated assault, or aggravated kidnapping while in official detention, as defined in 45-2-101, shall, if the provisions of 46-1-401 have been complied with, be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310.

Mont. Code Ann. § 46-18-220. The district court had the authority to sentence Maggi to life in prison for aggravated assault pursuant to this statute because the State complied with the provisions set out at Mont. Code Ann. § 46-1-401.

¹Maggi's 2011 conviction for aggravated kidnapping and his two convictions of aggravated assault in 2001 made him eligible for the mandatory life sentence without parole. *See* Mont. Code Ann. § 46-18-219(1)(b) (previously convicted of "two of any combination of the offenses listed in (1)(a)" and (1)(b)).

First, the State made sure “the enhancing act, omission, or fact was charged in the information, complaint, or indictment, with a reference to the statute or statutes containing the enhancing act, omission, or fact and the penalty for the enhancing act, omission, or fact.” Mont. Code Ann. § 46-1-401(1)(a). Here, the enhancing fact described in Mont. Code Ann. § 46-18-220 was that Maggi committed aggravated assault “while in official detention.” The State included that fact and referenced Mont. Code Ann. § 46-18-220 in all three charging documents.

Second, Maggi’s “jury unanimously found in a separate finding that the enhancing act, omission, or fact occurred beyond a reasonable doubt,” as indicated on the verdict form. Mont. Code Ann. §§ 46-1-401(1)(b), (2). In addition to the parties’ stipulation to this fact, the verdict form explicitly required a finding that Maggi committed Count I “while [he] was in official detention,” and the jury was correctly instructed on the definition of “official detention.” (Docs. 76, JI No. 45, 80.)

The State complied with the plain language of Mont. Code Ann. § 46-18-220 to support its request that the court impose a life sentence for Count I. Thus, the district court had the authority, and in fact was mandated by that provision, to sentence Maggi to life in prison for Count I.

Maggi nonetheless asserts the life sentence was “illegal” by arguing the district court failed to issue findings as “provided in 46-18-301 through 46-18-310.” (Opening Brief (Br.)) Specifically, Maggi asserts that the only way the district court could have sentenced him to life in prison for aggravated assault would be if it found an aggravating circumstance under Mont. Code Ann.

§ 46-18-303. Maggi identifies subsection (3) as the only applicable aggravating circumstance which states that

an “aggravating circumstance” would include when the offense was aggravated assault . . . committed while in official detention, as defined in 45-2-101, by an offender who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter, and one of the convictions was for an offense against the person in violation of Title 45, chapter 5 for which the minimum prison term is not less than 2 years.

Mont. Code Ann. § 46-18-303(3).

Focusing on the term “previously,” Maggi relies upon this Court’s holding in *Running Wolf*, where it interpreted the definition of PFO.² In that case, this Court held that for a person to be designated a PFO, there must be “a felony

² *Running Wolf* applied the 2015 definition of PFO, which was found at Mont. Code Ann. § 46-18-501 (2015). In 2017, the definition of PFO was moved to Mont. Code Ann. § 46-1-202(18) and the number and types of offenses required for a PFO designation were changed. *Running Wolf*, ¶ 23. However, the 2017 definition maintained the relevant language at issue here: a PFO is “an offender who has previously been convicted” of offense(s) within a certain time period.

conviction before the commission of the principal offense.” *Running Wolf*, ¶ 17. Maggi reasons that, since this case was the first time he was designated as a PFO and subsection (3)(b) requires the offender to have been “previously found to be” a PFO, the enhancement at Mont. Code Ann. § 46-18-220 could not apply.

Maggi’s reasoning is not compelling for two reasons. First, Part 3 was not applicable to his sentencing as it is specific to imposing the death penalty. Second, even if those provisions do apply to the sentencing enhancement at issue here, *Running Wolf* does not control, and the court had the authority to impose a life sentence because the facts of this case establish the existence of an aggravating factor from Mont Code Ann. § 46-18-303.

A. Part 3 did not apply since the State did not pursue the death penalty.

This Court must apply the relevant rules of statutory construction. *See, e.g.*, Mont. Code Ann. § 1-2-101 (when construing a statute, the court “is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.”); Mont. Code Ann. § 1-2-102 (when construing a statute, “the intention of the legislature is to be pursued if possible”).

When interpreting a statute, this Court first looks to the language of the statute to determine if the legislative intent can be discerned from “the plain

meaning of the words used in the statute.” *In re U.A.C.*, 2022 MT 230, ¶ 13, 410 Mont. 493, 520 P.3d 295 (citation omitted). However, “[t]he legislative intent behind a statute ‘may not be gained from the wording of any particular section or sentence, but only from a consideration of the whole.’” *U.A.C.*, ¶ 13 (citing *State v. Heath*, 2004 MT 126, ¶ 27, 321 Mont. 280, 90 P.3d 426). “Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it.” *U.A.C.*, ¶ 13 (citing *City of Missoula v. Fox*, 2019 MT 250, ¶ 18, 397 Mont. 388, 450 P.3d 898 (courts must construe several interrelated statutes in a manner that will give effect to each of them). This Court must “assess statutory requirements in the context of holistic statutory schemes ‘to pursue the Legislature’s intent and to avoid an absurd result.’” *Curran*, ¶ 25 (citation omitted); Mont. Code Ann. § 1-3-233.

When enacting Mont. Code Ann. §§ 46-18-301, et. al, the Legislature entitled Part 3 as “Death Penalty,” and the plain language of those provisions specifically describes the process for imposing the death penalty. As Mont. Code Ann. § 46-18-301(1) states, the procedure set forth in Part 3 details how a court is to determine if the penalty of death “may be imposed.” To make that determination, the court must conduct a specific death penalty hearing, pursuant to Mont. Code Ann. § 46-18-301. Moreover, as Mont. Code Ann. § 46-18-302(2) explains, during the death penalty hearing, the State and the defense “must be

permitted to present argument *for or against [the] sentence of death.*” (Emphasis added.) Importantly, the statutes do not direct the parties to argue for either the death penalty or life in prison.

Finally, the plain language of Mont. Code Ann. § 46-18-305 further confirms that Part 3 is designed to determine if the death penalty is warranted; it does not describe how to choose between life in prison or the death penalty. As that statute provides, after considering the enumerated aggravating and mitigating circumstances at Mont Code Ann. §§ 46-18-303 and -304, the court “*shall impose a sentence of death* [if] one or more aggravating circumstances” have been found by the trier of fact beyond a reasonable double doubt and the court has found a lack of “sufficiently substantial” mitigating circumstances. Mont. Code Ann. § 46-18-305 (emphasis added). That statute further instructs that only *after* a court declines to impose the death penalty may it then consider if a life sentence is appropriate. (*Id.*)

“When interpreting a statute, [this Court’s] objective is to implement the objectives the legislature sought to achieve.” *Mont. Vending, Inc. v. Coca-Cola Bottling Co.*, 2003 MT 282, ¶ 21, 318 Mont. 1, 78 P.3d 499. This Court will also read and construe the statutes as a whole to avoid an absurd result and to give effect to a statute’s purposes. *State v. Brendal*, 2009 MT 236, ¶ 18, 351 Mont. 395, 213 P.3d 448 (quotes and citations omitted).

The plain language of Mont. Code Ann. § 46-18-305 directs when a death sentence may be imposed. Only when the requirements are not present does the court then have discretion to sentence a defendant to life if one of the aggravating circumstances exists. When the plain language contained in Part 3 is considered as a whole, it is clear those provisions apply to the requirements for imposing the death penalty, not for deciding between the death penalty and life in prison.

In addition, the plain language of Mont. Code Ann. § 46-18-220 does not, as it does with the provisions at Mont. Code Ann. § 46-1-401, mandate that the provision of Part 3 “be complied with.” Had the Legislature intended for Part 3 to likewise be “complied with” it would have so stated. *See* Mont. Code Ann. § 1-2-101 (Court may not insert what has been omitted); Mont. Code Ann. § 1-2-102 (when construing a statute, “the intention of the legislature is to be pursued if possible). Instead, after explicitly stating that either life in prison or the death penalty may be imposed if “46-1-401 have been complied with,” the Legislature only pointed to Part 3. And, since Part 3 deals only with the appropriateness of imposing the death penalty, the reference to those provisions at the end of Mont. Code Ann. § 46-18-220 applies only if the State is seeking the death penalty.

Here, the State explicitly requested only imposition of a life sentence, making application of Part 3 unnecessary, including any obligation to make

findings relative to those provisions. Therefore, Maggi has not established that the court lacked the authority to impose a life sentence pursuant to Mont. Code Ann. § 46-18-220 since the State complied with Mont. Code Ann. § 46-1-401.

B. Even if Part 3 applied to Maggi, the district court had the authority to impose a life sentence.

Even if Part 3 did apply, pursuant to Mont. Code Ann. § 46-18-305, if a district court declines to impose the death penalty, the court “may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense” if one of the aggravating circumstances listed at 46-18-303 exists.” Here, Maggi met the second part of subsection (3) of that provision.

It is undisputed that Maggi was convicted of aggravated assault committed while in official detention as required by subsection (3)(b). That leaves only the determination that Maggi was an offender the court had “previously found” to be a PFO. As established, Maggi’s criminal history supports that he was a PFO: Maggi had been convicted of at least two violent felonies against a person that carried two-year minimum sentence (two aggravated assault convictions in 2001 and an aggravated kidnapping conviction in 2015).³ Thus, the district court could have “found” him to be a PFO.

³ See Mont. Code Ann. § 45-5-202(3) (1993) (two-year minimum term for aggravated assaults Maggi committed in December 1994); Mont. Code Ann. § 45-5-303(2) (2009) (two-year minimum term for aggravated kidnapping Maggi committed in September 2011).

The crux of Maggi's argument with respect to this final factor is his position that he could not be "previously found" to be a PFO because this was the first time the State sought that designation. (Br.) Maggi relies on the holding from *Running Wolf* to support his claim. However, *Running Wolf* is not dispositive in Maggi's favor.

In *Running Wolf*, the defendant was charged with a felony DUI and, while that case was pending, he committed another felony DUI. *Running Wolf*, ¶¶ 3-4. *Running Wolf* pleaded guilty to both felonies and the district court used the first conviction to designate him as a PFO for the second felony. *Id.* This Court reversed the PFO designation after concluding that a court could not designate a person as a PFO if it was simultaneously sentencing the person on the "prior felony" and the current felony for which he would be sentenced as a PFO. *Running Wolf*, ¶¶ 12-29.

The temporal connection in *Running Wolf* related to when a defendant was convicted of the prior felony, with this Court finding the "previous conviction" needed to occur prior to the commission of the instant offense. Unlike *Running Wolf*, Maggi had a "previous" felony conviction—his 2018 conviction for felony possession of a deadly weapon by a prisoner—that was within five years of him committing the instant offenses. Thus, Maggi could have been "found" to be a PFO because he was "an offender who has *previously* been convicted" of the

required prior felonies under Mont. Code Ann. § 46-1-202(18) (2017) (emphasis added).

In addition to the definition of PFO, the temporal term “previous” also appears at Mont. Code Ann. § 46-18-303(3)(b), which defines an aggravating circumstance as when the offense is aggravated assault committed while in official detention “by an offender who [had] been *previously found* to be a” PFO and “and one of the convictions was for an offense against the person” that carries a minimum sentence of two years. Unlike the definition of PFO, which requires the *conviction* of the prior felony to be before the instant offense, subsection (3) states the court may find an aggravating circumstance exists once it *finds* an offender is a PFO.

Although both statutes use the same temporal word, “previously convicted” is not the equivalent to “previously *found*.” *Finding* that a defendant meets the definition of PFO occurs at sentencing as opposed to having been *convicted* of a prior felony, which this Court held in *Running Wolf* may not be determined simultaneously with a PFO designation.

Findings relevant to the existence of aggravating or mitigating circumstances are entered at the time of sentencing. And since the need for a “previous *conviction*” is already built into the definition of PFO through Mont. Code Ann. § 46-1-202(18), it would lead to an absurd result if the PFO designation or findings

would also need to predate commission of the instant offense. This conclusion also conforms to the purpose behind sentencing enhancements, which are

to identify defendants who have not reformed their behavior after prior convictions and to incarcerate those defendants for a longer period of time than would otherwise be applicable in order to protect the community and deter others from similar behavior. The enhanced penalty statutes therefore provide *fair warning* to offenders that if they continue to commit criminal acts after having the opportunity to reform following one or more prior contacts with the criminal justice system, they will be imprisoned for a longer period of time.

Running Wolf, ¶ 26 (emphasis in original).

There is no question Maggi had clear warning of possible sentencing enhancements from the State's notice of intent to rely upon Mont. Code Ann. § 46-18-220 to request a life in prison sentence for Count I, consecutive sentences for all the counts under Mont. Code Ann. § 46-23-217, and possible designation as a PFO. Thus, even if Title 46, chapter 18, part 3 applied to Maggi, which the State does not believe it does, the district court could have imposed the life sentence for Count I.

Maggi has not established that the district court lacked the authority to impose a life sentence. *Curran*, ¶ 13. Accordingly, the sentence imposed upon Maggi was not illegal. *Running Wolf*, ¶ 7.

C. If the district court lacked authority to impose a life sentence for Count I under Mont. Code Ann. § 46-18-220, the remedy is to remand the case for a new sentencing hearing.

Finally, if this Court concludes the district court lacked authority to impose a life sentence for Count I, the proper remedy is to remand the matter back to the district court to conduct a new sentencing hearing. *See State v. Heafner*, 2010 MT 87, ¶ 11, 356 Mont. 128, 231 P.3d 1087 (“when a portion of a sentence is illegal, the better result is to remand to the district court to correct the illegal provision”); *State v. Johnson*, 2010 MT 288, ¶¶ 17-18, 359 Mont. 15, 245 P.3d 1113 (if the offending portion of the sentence affects and undermines the integrity of the sentence as a whole, resentencing is required); *State v. Hicks*, 2006 MT 71, ¶ 44, 331 Mont. 471, 133 P.3d 206 (“where the illegal portion of a sentence affects the entire sentence or [this Court is] unable to determine what sentence the trial court would have imposed under a correct application of the law,” the matter will be remanded for resentencing).

Here, the district court clearly believed that Maggi should be sentenced to a life sentence based on his criminal history, the violent nature of the crime, and that it occurred in prison. The court consciously chose to not impose a PFO sentence for Counts II and III only after it explained why Maggi should be sentenced to life in prison. If the life sentence for Count I must be stricken as improperly imposed,

that would impact the entire sentence. Accordingly, this matter would need to be remanded for a new sentencing hearing.

CONCLUSION

The district court's judgment and sentence should be affirmed.

Respectfully submitted this 8th day of November, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman 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 5,421 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Katie F. Schulz

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CERTIFICATE OF SERVICE

I, Kathryn Fey Schulz, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-08-2023:

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