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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

STATE OF MONTANA,
Plaintiff,

vs.

CLEVE ERNEST SPANG,
Defendant.

CAUSE NO. DC 21-1506

JUDGE DONALD L. HARRIS

JUDGMENT

On December 8, 2021, Defendant appeared in District Court for initial arraignment.

On October 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 DRIVING A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS (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 December 9, 2022, Defendant appeared before the Court with Counsel Gregory Paul Johnson for sentencing.

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 DRIVING A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS (FELONY) the Defendant is sentenced pursuant to § 46-18-201, MCA to the Department of Corrections for THIRTEEN (13) MONTHS. Upon Defendant's successful completion of a residential alcohol treatment program operated or approved by the Department of Corrections, the remainder of the THIRTEEN (13) MONTHS sentence must be served on probation. Defendant will provide a written release of information from all treatment providers.

IT IS FURTHER ORDERED that for DRIVING A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS (FELONY) Defendant is sentenced to the Department of

Corrections for an additional FIVE (5) YEARS all of which is suspended and runs CONSECUTIVELY to the term imposed above. Defendant will pay a fine of FIVE THOUSAND DOLLARS (\$5,000.00) to be credited to the General Fund.

IT IS RECOMMENDED that Defendant be considered for placement at the Warm Springs Addictions Treatment and Change Program (WATCH).

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 the greater of \$20 or 10% of the fine for each felony offense. [§46-18-236(1)(b), MCA]
- c. 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]
- d. \$10.00 for court information technology fee. (§3-1-317, MCA)
- e. Costs of assigned counsel: All payments for Public Defender fees assessed after July 1, 2017, can be made online at OPDfee.mt.gov, OR payments in the form of a money order, certified check or cashier's check made payable to OPD can be mailed to the Office of the State Public Defender, -17 W. Galena Street, Butte, MT 59701. The Defendant must include the court case number and an address and phone number. (§46-8-113, MCA)
- f. A \$50 fee at the time a PSI report is completed, unless the court determines the Defendant is not able to pay the fee within a reasonable time (46-18-111, MCA). The Defendant shall pay online at <https://svc.mt.gov/doa/opp/COROffenderPay/cart> OR by submitting a money order or cashier's check to the Department of Corrections, Collections Unit, PO Box 201350, Helena, MT 59620. Please include your District Court case number & DOC offender ID #.
The Defendant **did not** pay the PSI fee.
- g. The Defendant shall pay court ordered restitution online at <https://svc.mt.gov/doa/opp/COROffenderPay/cart> OR by money order or cashier's check sent to the Department of Corrections, Collections Unit, PO Box 201350, Helena, MT 59620. Please include your District Court case number & DOC offender ID #. The Defendant shall be assessed a 10% administration fee on all restitution ordered. All of the methods for collection of restitution provided under 46-18-241 through 46-18-249, MCA, shall apply, including garnishment of wages and interception of state tax refunds. Pursuant to 46-18-244(6)(b), MCA, the Defendant shall sign a statement allowing any employer to garnish up to 25% of his/her wages. The Defendant shall continue to make monthly restitution payments until he/she has paid full restitution, even after incarceration or supervision has ended.
- h. The Defendant shall pay a fine(s) over and above any amount credited for pre-conviction incarceration as ordered and directed by the court. (§46-18-231, MCA) (Officers need to list fine(s) per Cause No. or Offense if only one Cause No.)
Recommended net fine to be paid to the Clerk of District Court: \$_____.

- i. 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. The Defendant, convicted of a felony offense, shall submit to DNA testing. (§44-6-103, MCA)
15. The Defendant shall be given credit against the time served in jail prior to or after conviction. (§46-18-403, MCA)
16. The Defendant will surrender to the court any registry identification card issued under the Medical Marijuana Act. [§46-18-202(1)(f), MCA]
17. The Defendant shall not abscond from supervision. Absconding is a non-compliance violation as defined in §46-23-1001(1), MCA.
18. 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.
19. The Defendant shall successfully complete Cognitive Principles & Restructuring (CP&R) or similar cognitive and behavioral modification program.
20. The Defendant shall not enter any bars.
21. The Defendant shall not enter any casinos.
22. The Defendant shall not knowingly associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer outside a work, treatment, or self-help group setting. The Defendant shall not associate with persons as ordered by the court or BOPP.
23. The Defendant shall attend self-help meetings at the direction of the Probation & Parole Officer.
24. The Defendant shall advise all medical personnel of addiction history/conviction, including all prescribed narcotics and/or medical marijuana.
25. 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.
26. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.
27. The Defendant's driver's license shall be suspended pursuant to §45-9-202(2)(e), MCA
28. The Defendant shall participate in the 24/7 Sobriety and Drug Monitoring Program, or any program specifically designed to monitor and address the Defendant's use of intoxicants, for a period of time to be determined by the supervising Probation & Parole Officer, if the Officer deems it necessary and the program is available. [§46-18-201(4)(n), MCA]
29. The Defendant shall pay a fine of \$5,000. (§61-8-731, MCA)

30. The Defendant, if financially able, as a condition of probation, shall pay for the cost of imprisonment, probation, and alcohol treatment for the length of time he/she is imprisoned, on probation, or in alcohol treatment. (§61-8-731, MCA)
31. If the Officer authorizes the Defendant to drive, he/she shall not drive unless the vehicle is equipped with an ignition interlock system. (§61-8-731, MCA)
32. The Defendant shall enter and remain in an aftercare treatment program for the entirety of the probationary period. The Defendant shall pay for the cost of out-patient alcohol treatment during the term of probation. (§61-8-731, MCA)
33. The Defendant shall submit to random or routine drug and/or alcohol testing. (§61-8-731, MCA)
34. The Defendant shall complete a chemical dependency education course. (§61-8-732, MCA)
35. The PSI report shall be released by 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 Defendant's statement presented at the Sentencing Hearing.
3. The Court considered the following criteria for sentencing: non-violent circumstances of the offense, Defendant's age, Defendant's employment, Defendant pled Guilty and accepted responsibility and Defendant's criminal history consisting of felony and misdemeanor convictions which indicate little or no respect for the rules / laws of society along with the recommendations / arguments of counsel.
4. The Court, for the above-stated reasons, imposed a suspended sentence for a term long enough to keep Defendant away from alcohol, to change his attitude toward alcohol and to monitor Defendant's sincerity in proving to this Court that he will successfully address his substance addiction.

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 December 9, 2022.

/s/ Donald L. Harris
DISTRICT COURT JUDGE

cc: YCAO cadocs@yellowstonecountymt.gov - alh
Yellowstone County Sheriff's Office (C&O 21-725945)
Probation & Parole CORP&PREGIV@mt.gov
Defense - Gregory Paul Johnson

DC 21-1506

Electronically Signed By:
Hon. Judge Donald L Harris
Thu, Feb 02 2023 12:53:12 PM

Yellowstone County District Court

Case: DC-21-1506

Defendant: Cleve Ernest Spang

Minutes Report

Hearing Type: Sentencing

Assigned Judge: Donald Harris

Court Reporter: Electronic FTR 401

Minutes Clerk: Lena Chamberlain

Prosecutor: Holley Metzger

Defense Attorney: Gregory Johnson

Date: 12/09/2022

Start time: 02:37 p.m.

End time: 03:07 p.m.

On December 9, 2022, at 02:37 p.m., this cause comes on regularly before the Court for Sentencing.

Present in court is Deputy County Attorney Holley Metzger and the defendant, with counsel, Gregory Johnson.

The defendant states he has no legal cause to show why judgment should not be pronounced against him at this time.

On COUNT I: Driving Under the Influence of Alcohol – 4th or Subsequent Offense (Felony), the Court's sentence is that the defendant be committed to the Department of Corrections for a term of 13 months for placement in an appropriate institution followed by 5 years to the Department of Corrections. The Court suspends the last 5 years, placing the defendant on probation under the rules and regulations of the State Department of Probation and Parole with special conditions as set forth in the Pre-Sentence Report to include: a Fine in the amount of \$5,000.

The Court signs an order to remand the defendant to the custody of a Deputy Sheriff.

The defendant is remanded to the custody of a Deputy Sheriff.

Court is in recess at 03:07 p.m.