

Hon. Dan Wilson
District Court Judge, Dept. D
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, MT 59901
Phone: (406) 758-5906

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

State of Montana,)	
)	Cause No. DC-15-2021-0000378-IN
Plaintiff,)	
)	JUDGMENT AND SENTENCE
vs.)	
)	
Jonathan Douglas Shaw,)	
)	
Defendant.)	

On 11/30/2023 the above-named Defendant appeared with counsel for a hearing in aggravation and mitigation of sentence following the Defendant's guilty plea or conviction on 07/13/2023. The Court having considered the record now enters the following Judgment and Sentence.

1) Offenses.

Count 1: Deliberate Homicide, a Felony, in violation of Mont. Code Ann. § 45-5-102.

- ☐ The Defendant is committed to the **Department of Corrections** for a period of _____ year(s), with _____ years suspended.
- ☒ The Defendant is sentenced to the **Montana State Prison** or other prison designated by the Department for a period of 100 year(s), with 0 year(s) suspended.

Sentencing Enhancement pursuant to § 46-18-221(1), MCA, for Count 1: Deliberate Homicide, a Felony, in violation of Mont. Code Ann. § 45-5-102.

- ☐ The Defendant is committed to the **Department of Corrections** for a period of _____ year(s), with _____ years suspended.
- ☒ The Defendant is sentenced to the **Montana State Prison** or other prison designated by the Department for a period of 10 year(s), with 0 year(s) suspended.

Count 2: Deliberate Homicide Attempt, a Felony, in violation of Mont. Code Ann. §§ 45-4-103(1) and 45-5-102.

- ☐ The Defendant is committed to the **Department of Corrections** for a period of _____ year(s), with _____ years suspended.
- ☒ The Defendant is sentenced to the **Montana State Prison** or other prison designated by the Department for a period of 50 year(s), with 0 year(s) suspended.

Sentencing Enhancement pursuant to § 46-18-221(1), MCA, for Count 2: Deliberate Homicide Attempt, a Felony, in violation of Mont. Code Ann. §§ 45-4-103(1) and 45-5-102.

- ☐ The Defendant is committed to the **Department of Corrections** for a period of _____ year(s), with _____ years suspended.
- ☒ The Defendant is sentenced to the **Montana State Prison** or other prison designated by the Department for a period of 10 year(s), with 0 year(s) suspended.

- 2) **Credit for Time Served.** Defendant is given credit for 806 days served in custody.
- 3) **Concurrent/Consecutive Provisions.** The Sentences on Count 1 and the Sentencing Enhancement for Count 1 shall run ☐ concurrently or ☒ consecutively, one to the other. The Sentences on Count 2 and the Sentencing Enhancement for Count 2 shall run ☐ concurrently or ☒ consecutively, one to the other. Finally, the Sentences on Count 1 and the Sentencing Enhancement for Count 1 shall run ☐ concurrently or ☒ consecutively to both the Sentences on Count 2 and the Sentencing Enhancement for Count 2. The net sentence is 170 years to the Montana State Prison or other prison designated by the Department.
- 4) **Fines, Fees, Surcharges.** The Defendant shall pay immediately, but in no event after the expiration of the sentence or disposition set out in this Judgment, the following financial obligations to the Clerk of District Court, 920 South Main Street, Suite 310, Kalispell, MT 59901.
- a) Surcharge of \$15 for each misdemeanor. [§46-18-236(1)(a), MCA] Defendant to pay: \$0
- b) Surcharge of the greater of \$20 or 10% of the fine for each felony offense. [§46-18-236(1)(b), MCA] Defendant to pay: \$0

- 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] Defendant to pay: \$0
 - d) \$10.00 for court information technology fee. (§3-1-317, MCA) Defendant to pay: \$0
 - e) 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) Defendant to pay net fine of \$0
 - 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) Defendant to pay: \$0
- 5) **Probation & PSI Fees.** During any period of probation, parole, or community supervision, the Defendant shall pay the following fee and/or charges:
- a) The Probation & Parole Officer shall determine the amount of supervision fees (46-23-1031, MCA) to be paid each month. Payments can be made online at <https://svc.mt.gov/doa/opp/COROffenderPay/cart> OR in the form of money order or cashier's check to the Department of Corrections, Collections Unit, PO Box 201350, Helena MT 59620 (\$50 per month if the Defendant is sentenced under 45-9-902, 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. The Defendant will include the District Court case number & DOC offender identification number with each payment.
 - b) The Defendant shall pay 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. The Defendant will include the District Court case number & DOC offender identification number with the payment. Defendant is ordered to pay \$0

- 6) **Restitution.** The Defendant shall pay restitution immediately or in monthly installments to the victim(s) as follows.
- a) 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. All payments will include the Defendant's District Court case number & DOC offender identification number. The Defendant shall be assessed a 10% administration fee on all restitution ordered.
 - b) 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.
 - c) Restitution is owed to the victims in the following amounts:
 - i) \$560.00, William Keck, Address submitted directly to Collection Unit
 - ii) \$40,406.43, Dave and Jennifer Hurley, Address submitted directly to Collection Unit
- 7) **Parole Restriction.** Pursuant to § 46-18-202, MCA, Defendant is ineligible for parole and participation in the supervised release program until the Defendant has served ___55___ years of the above term of imprisonment for the protection of society for these reasons.

The Court is authorized in sentencing a person for a felony conviction to impose a parole restriction and, in this regard, the Court is mindful not only of the aggravating factors which caused it to impose the sentence on Count 1 and its sentencing enhancement and Count 2 and its sentencing enhancement that Mr. Shaw is, in the

Court's view, perhaps more dangerous than even a person who possesses a psychotic, malicious personality, bent on causing mass death or destruction in this sense: Mr. Shaw murdered Matthew Hurley and would have – and could have – Also murdered Mr. Keck for reasons that defy any rational explanation. The Court watched Mr. Shaw testify in this matter, heard his plaintive testimony asserting over and over again his fear that either Matthew Hurley or the assistant manager, Little Matt, somehow presented an immediate threat of serious bodily injury or death to him, and the Court did not find a bit of those claims or Mr. Shaw's testimony on those issues to be credible in the least. And instead, finds that Mr. Shaw in his protests on the witness stand for his supposed fear for his own safety to have been a fabrication motivated by the same sort of trappings that his overweening ego originally caused him to see the insult that he viewed Matthew Hurley delivering to him by way of a notice that he had to move out of the Fuel Fitness parking lot as reason or justification to take Matthew Hurley's life.

In summary, the Court finds that Mr. Shaw killed and murdered Matthew Hurley in the most irrational, irreverent, and cold-blooded manner that could possibly motivate a human being to commit such a heinous act. And because the Court finds that Mr. Shaw is and is likely to constitute to anyone in society – were he to find himself living at large among the citizens of Montana or any other place – to be such threat and danger to anyone in the most innocuous of circumstances that parole must be restricted. Mr. Shaw now being 37 years of age, in order to reasonably assure that he would not have the opportunity to commit such an act as occurred in this case, his parole is restricted for a period of 55 years.

- 8) **Reasons for Sentence.** In determining the sentence, the Court has been guided by the sentencing policy of the State of Montana described at § 46-18-101, MCA. The policy provides that in fashioning a sentence a court is to impose a punishment commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable; to protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders; to provide restitution, reparation, and restoration to the victim of the offense; and to encourage and provide

opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community. In keeping with this policy the Court finds the following:

- ☐ The sentence is consistent with the **joint sentencing recommendation** of the parties.
- ☐ The sentence is both consistent with the parties' plea agreement and commensurate with the punishment imposed on other persons committing the same or similar offense conduct.
- ☐ The sentence is consistent with the recommendation of Adult Probation and Parole.
- ☒ The sentence takes into account the impact of Defendant's offense conduct upon the victim(s).
- ☒ The sentence provides punishment commensurate with the seriousness of the offense conduct.
- ☒ The sentence serves to increase public safety and protect the public by imposing incarceration for Defendant's violent offense conduct.
- ☒ The sentence provides for restitution, reparation, and restoration to the victim of Defendant's offense conduct.
- ☐ The sentence encourages and provides opportunities for Defendant's self-improvement and provides for Defendant's rehabilitation and reintegration back into the community.
- ☒ The Court finds the following, additional factors in mitigation or aggravation of sentence:

- A. In mitigation of sentence: with respect to both sentences, the Court finds that Mr. Shaw has no prior, serious criminal history or even a minor criminal history. With respect to Count 2: Attempted Deliberate Homicide, the Court finds in mitigation that William Keck did not lose his life and that the offense was committed by Mr. Shaw in the course of a gun battle between Mr. Keck and Mr. Shaw.

B. In aggravation of sentence, the Court finds that the deliberate homicide was committed by Mr. Shaw in a state of mind which is, in the Court's view and finding, as close to a premeditated act as could possibly have occurred under the circumstances. The Court finds that Mr. Shaw not only was enamored of his weapons but he was enamored, if not addicted to, the false sense of power and comfort that so much firepower and ammunition carried with it. The Court does not find credible the notion that Mr. Shaw was afraid for his life or for his safety on that day. The Court finds, instead, and the trial evidence more than adequately shows in support of such a finding, that Mr. Shaw decided that Matthew Hurley was going to die that day out of a sense of petulance, an overweening exhibition of his self-importance, the aggrandizement of his ego, and out of a desire and decision made quite consciously that he was going to kill a human being – not because Matthew Hurley or Little Matt, as he was affectionately called during the trial, presented any threat or danger to him but that because Matthew Hurley had committed, in Mr. Shaw's mind, the unforgivable offense of insulting him.

The Court read the mitigation report of Ms. Cunningham, and it brought with it a great sense of irony in this way: although Ms. Cunningham evidently is a licensed clinical social worker in several states, not including Montana, but is regularly employed or contracted to perform mitigation investigations and drafting and preparing and submitting mitigation reports in cases such as this, the circumstances on which Ms. Cunningham based her diagnosis of Mr. Shaw – what the Court can only view as a pseudo- diagnosis – as falling on the autism spectrum not to be credible. There was no demonstration that Ms. Cunningham would be qualified in any event to make such a diagnosis and it appears, from the Court's reading of the mitigation report, that Ms. Cunningham was relying for this characterization of hers that Mr. Shaw falls on the autism spectrum upon the anecdotal reports of one or two people who were willing to speak with her, including a friend of Mr. Shaw's who was experienced with Mr.

Shaw in playing video games of a shooting nature. The Court read the mitigation report with respect to this characterization of Mr. Shaw as falling on the autism spectrum as essentially an insult to persons who genuinely suffer such a condition by suggesting that the autism spectrum characteristics of Mr. Shaw, which again the Court does not find credible, in combination with other unfortunate factors of his growing up, left him so bereft and without coping skills or associate social skills to see the world as anything but an overwhelming threat. Instead, the Court finds that Mr. Shaw sought to portray himself as a person highly capable of providing for his own needs, for example, it is understood that Mr. Shaw's trailer was outfitted in a technologically sophisticated way to provide safe and secure shelter under just about any condition of weather that might be encountered in northwest Montana. The Court does not find the mitigation report helpful except in the respect that it provides an insight into a view of Mr. Shaw and his growing up, his character, his propensity for peace or violence seen from an entirely skewed point of view, and the mitigation report – unfortunately for this Court – did not hit its mark. Instead, the Court finds from the mitigation report that the writer was so utterly biased and ill-informed that the conclusions are not credible and, in fact, support, more than in mitigation, the Court's finding in aggravation that this act was one that was all but premeditated, was the act of a person who was determined to somehow make his mark in this world by conflating the smallest or tiniest of social insults into a false sense of victimhood, a false sense of threat from the outside world, and to vindicate his desire to exert deadly force against someone who in any objective sense of the word truly did not merit or deserve it under any circumstance.

The Court finds these aggravating factors to be so aggravating and so egregious as to justify the maximum term of imprisonment for the offense of Count 1: Deliberate Homicide and, so, on the offense of Count I, Mr. Shaw is sentenced to 100 years in the Montana State Prison or some other prison designated by the Department of

Corrections and for the weapons enhancement which was found properly by the jury in this matter, reflected the legislature's determination that although in Montana we cherish our freedoms including the right to own, possess, and bear firearms, nonetheless, there is as tradition as deeply established and just as much cherished that imposes upon persons who own, possess, and bear firearms to do so in a responsible way. The craven act of shooting defenseless Matthew Hurley by Mr. Shaw is, in the Court's view, indicative of the worst abuse of the right to bear arms that could possibly be imagined. And so, for the sentence enhancement available for the use of a firearm in connection with the offense of deliberate homicide, the Court sentences Mr. Shaw to 10 years to the Montana State Prison or other prison designated by the Department with none of that time suspended and the sentence on Count 1 and the weapon enhancement for Count 1 are ordered to run consecutively.

On Count 2: Attempted Deliberate Homicide, it is material to the Court's determination of an appropriate sentence that the victim, William Keck, in that case not only did not die and did not suffer apparently life threatening injuries – although his life is permanently altered – the Court acknowledges that in aggravation, nonetheless, the fact that the offense of Count 2 occurred in the context of the nondeadly employment of the use of a weapon and did not inflict an injury on Mr. Keck that either took his life or substantially made it more likely that he would die from the gun shot, the Court sentences Mr. Shaw to 50 years in the Montana State Prison or other prison or other prison designated by the Department with none of that time suspended. For Mr. Shaw's use a firearm in connection with the offense of Count 2, all the same reasons the Court found aggravating with respect to the weapons enhancement factor regarding the sentence on Count 1 apply, as well. And so, for the weapon enhancement on Count 2, Mr. Shaw is sentenced to 10 years in the Montana State Prison or other prison designated by the Department and the sentence on Count 2 and the weapon enhancement on Count 2, likewise, will run consecutively.

The sentence on Count 1, along with its sentencing enhancement, and the sentence on Count 2, along with that sentencing enhancement will, for the same reasons as the Court found to be in aggravation of both offenses, run consecutively, for a net sentence of 170 years.

9) **Bail.** Any bond or bail posted is exonerated.

10) **Objection(s) to Written Judgment.** If either party believes this written judgment does not conform to the oral pronouncement of sentence made in open court, the party must file a written request to modify this judgment within 120 days after it has been filed. Failure to file a timely request to modify the written judgment will result in waiver of the right to request modification.

11) **Recommended Conditions.** During any period of community supervision, the Court recommends adoption of the conditions set out in the attached Exhibit A.

DONE IN OPEN COURT on 11/30/2023.

DONE AND DATED by electronic signature as indicated below.

/s/ Dan Wilson

Hon. Dan Wilson
District Court Judge

c: County Attorney
Colin Stephens / Paul Simon - Attorneys for
Defendant

Flathead County Sheriff's Office
Adult Probation and Parole
Department of Corrections
Department of Justice
Montana State Prison

Kalispell Police Department (arresting agency)
Whitefish Police Department (arresting agency)
Columbia Falls Department (arresting agency)
Montana Highway Patrol (arresting agency)

IF INCARCERATED:
Board of Pardons

Exhibit A

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, marijuana, 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. ***
14. ***
15. ***
16. If the Defendant is convicted of a crime listed in §46-23-502(13), MCA, he/she shall register as a violent offender. [§46-18-201(7), MCA]
17. The Defendant, convicted of a felony offense, shall submit to DNA testing. (§44-6-103, 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 not possess or use any electronic device or scanner capable of listening to law enforcement communications.
20. The Defendant shall not enter any bars or casinos.
21. The Defendant shall not establish a checking or credit account.
22. The Defendant shall provide yearly credit report.
23. 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.
24. The Defendant shall not knowingly have any contact, oral, written, electronic or through a third party, with the victim(s) unless such contact is voluntarily initiated by the victim(s) through the Department of Corrections. DOC staff may notify victims about the availability of opportunities for facilitated contact with their offenders without being considered “third parties.”

25. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.
26. The Defendant shall enter and complete an Anger Management Program to assist in dealing with his/her violent criminal behaviors.
27. The PSI report shall be released by the Department to certain persons, such as treatment providers, mental health providers, and/or medical providers, as needed for the Defendant's rehabilitation.