IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0317

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DAVID ALAN DAMON,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, The Honorable John Kutzman, Presiding

APPEARANCES:

AUSTIN KNUDSEN
Montana Attorney General
TAMMY K PLUBELL
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
tplubell@mt.gov

JOSHUA RACKI
Cascade County Attorney
121 4th Street North, Suite A
Great Falls MT 59401

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

DAVID ALAN DAMON
#44122
Montana State Prison
700 Conley Lake Road
Deer Lodge, MT 59722

DEFENDANT AND APPELLANT
PRO SE

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STATEMENT OF THE ISSUE

Whether the district court properly denied Appellant's motion to amend or modify his 2014 judgment sentencing Appellant to 50 years in prison for incest with 10 years suspended and restricting Appellant's parole until he completed Phases I and II of the sexual offender treatment program at Montana State Prison (MSP).

STATEMENT OF THE CASE AND FACTS[1]

On February 5, 2013, the State charged Appellant David Damon (Damon) with two counts of felony incest, and one count of felony tampering with witnesses. (D.C. Doc. 2.) The State and Damon entered into a global plea agreement that addressed the charges in the instant case, a revocation proceeding, and a charge in another county. (D.C. Doc. 24, attached as App. A.) Damon agreed to plead guilty to one count of incest in Cascade County and one count of incest in Lewis and Clark County. (App. A at 3.) Damon also agreed to admit to violating the conditions of his probation by committing a new offense. (*Id*.)

The State agreed to dismiss one count of incest and a witness tampering charge in Cascade County, and to withdraw other alleged probation violations in

[1] Because this is a purely legal issue, the facts of the underlying offense are not relevant to the issue Damon has presented on appeal.

the revocation proceeding. The State was free to make any sentencing recommendation for the incest charge but agreed to recommend that the sentence run concurrently with Damon's other sentences. The prosecutor in Lewis and Clark County was free to make any lawful sentencing recommendation. (*Id*.) Damon signed and filed an acknowledgement and waiver of rights. (D.C. Doc. 23, attached as App. B.) On September 9, 2013, the district court conditionally accepted Damon's guilty plea. (D.C. Doc. 27.)

Before the sentencing hearing, Damon filed a sentencing memorandum in which he stated that since he was already in prison he had already started Phase I of the sexual offender treatment program, and explained that his placement in Phase II would depend on the sentence the court imposed because prison inmates with short sentences get priority for treatment slots, and inmates with longer sentences are placed on a waiting list. (D.C. Doc. 37 at 9.) Damon recommended that the district court sentence him to MSP for 25 years with 15 years suspended, "with the condition that he shall not be eligible for parole until he completes phases I and II of a sex offender treatment program." (*Id*. at 10.)

The district court held a sentencing hearing on February 18, 2014. (D.C. Doc. 42, attached as App. C.) Based on a sexual offender evaluation, the district court designated Damon as a Tier II sexual offender. (*Id*. at 2.) The district court also designated Damon as a persistent felony offender. (*Id*.) The court sentenced

Damon to MSP for 50 years with 10 years suspended and conditioned his parole eligibility on his completion of Phases I and II of the MSP sexual offender treatment program. (*Id*. at 3.) The court further ordered that Damon's sentence run concurrently to his sentence in Lewis and Clark County and to his revocation disposition. (*Id*.) Damon did not appeal his sentence or timely seek any other postconviction relief.

On February 15, 2024, Damon filed a motion in the district court requesting that the district court modify his judgment and sentence to remove the parole restriction of completing Phases I and II of the sexual offender treatment program and instead order community-based treatment. (D.C. Doc. 45, attached as App. D.) On April 17, 2024, the district court entered an order denying the modification. (D.C. Doc. 47, attached as App. E.) The district court explained:

> Judge Neill's sentence was not only legal but *statutorily required* in 2014. Mont. Code Ann. § 46-18-207. Mr. Damon has identified no legal authority that would allow this Court to amend a 10-year-old sentence, and the Court knows of none. This is accordingly a parole eligibility problem, not a problem with the sentence. Mr. Damon's relief, if any, is through the parole board and/or the Department of Corrections. The Court accordingly **DENIES** his *Motion for Modification of Judgment* (CR45).

(*Id*. (emphasis in original).)

Damon filed a notice of appeal on May 20, 2024. (D.C. Doc. 48.)

SUMMARY OF THE ARGUMENT

Ten years after the district court sentenced Damon and entered its judgment, Damon moved the district court to modify the lawfully imposed sentence and judgment to remove the parole restriction requiring him to complete sexual offender treatment at MSP before becoming parole eligible. The law is well-settled that a district court has no authority to modify a judgment after it is imposed unless it has express statutory authority to do so. Here, the district court had no such authority and properly denied Damon's motion.

ARGUMENT

I. The standard of review

This Court reviews a criminal sentence for legality, meaning, whether the sentence is within statutory parameters. *State v. Southern*, 2022 MT 203, ¶ 6, 410 Mont. 330, 519 P.3d 1. This Court reviews a district court's decision to grant or deny a post-trial motion in a criminal case for an abuse of discretion. *State v. Erickson*, 2018 MT 9, ¶ 10, 390 Mont. 246, 408 P.3d 1288.

II. The district court correctly concluded that it had no authority to modify Damon's judgment to remove a parole restriction.

Damon concedes that the district court imposed a legal sentence in 2014, which included the parole restriction requiring him to complete Phases I and II of

the sexual offender treatment program at MSP. (Appellant's Br. at 1.) Damon himself recommended the parole eligibility restriction in his sentencing memorandum. (D.C. Doc. 37 at 9.) The statute in place in 2014 also mandated that the district court impose the parole restriction. Mont. Code Ann. § 46-18-207 (2013).

Ten years later, in Damon's motion to amend his judgement, Damon asked the district court to remove the parole eligibility restriction. But this Court has held that once "a valid sentence has been pronounced, the court imposing that sentence has no authority to modify or change it, except as provided by statute." *State v. Megard*, 2006 MT 84, ¶ 17, 332 Mont. 27, 134 P.3d 90, citing *State v. Fetterer*, 260 Mont. 397, 400, 860 P.2d 151, 154 (1993); *Erickson*, ¶ 15. As the district court in this matter correctly noted, Damon cited no authority, nor can he, from any statutes or case law that would have allowed it to modify Damon's judgment.

Montana Code Annotated § 46-18-116 provides, in relevant part:

> (2) If a written judgment and an oral pronouncement of sentence or other disposition conflict, the defendant or the prosecutor in the county in which the sentence was imposed may, within 120 days after filing of the written judgment, request that the court modify the written judgment to conform to the oral pronouncement. The court shall modify the written judgment to conform to the oral pronouncement at a hearing, and the defendant must be present at the hearing unless the defendant waives the right to be present or elects to proceed pursuant to 46-18-115. The defendant and the prosecutor waive the right to request modification of the written judgment if a request for modification of the written judgment is not filed within

> 120 days after the filing of the written judgment in the sentencing court.
>
> (3) The court may correct a factually erroneous sentence or judgment at any time. Illegal sentences must be addressed in the manner provided by law for appeal and postconviction relief.

A district court can make an amendment to the judgment under this statute only "to correct an error that is apparent on the face of the record." *Megard*, ¶ 19. As this Court explained, "The law does not permit a court to exercise revisory power over its own adjudications after they have, in contemplation of the law, passed out of the 'breast of the judges.'" *Id.*, quoting *Fredericks v. Davis*, 6 Mont. 460, 463, 13 P. 125, 127 (1887).

The district court had no authority to grant Damon the relief he requested and, therefore, it did not abuse its discretion in denying the motion. In so doing, the district court correctly observed that Damon's issue would be more appropriately addressed by the Department of Corrections or the parole board.[2]

CONCLUSION

The district court correctly denied Damon's motion to amend the judgment because the district court had no authority to grant Damon the relief he requested.

[2] This Court has recently denied habeas relief to a petitioner who made a claim like the claim Damon raised in the district court. *See Patterson v. Salmonsen*, OP 24-0045 (April 9, 2024).

The State requests that this Court affirm the order of the district court denying Damon's motion to modify the judgment the court imposed in 2014.

Respectfully submitted this 9th day of September, 2024.

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: */s/ Tammy K Plubell*
TAMMY K PLUBELL
Assistant Attorney General

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 1,468 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ Tammy K Plubell
TAMMY K PLUBELL

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APPENDICES

CERTIFICATE OF SERVICE

I, Tammy K Plubell, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-09-2024:

David Alan Damon (Appellant)
#44122
Montana State Prison
700 Conley Lake Drive
Deer Lodge MT 59722
Service Method: Conventional

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Service Method: eService
E-mail Address: jracki@cascadecountymt.gov

Electronically signed by Janet Sanderson on behalf of Tammy K Plubell
Dated: 09-09-2024