

STATE OF MONTANA,

Plaintiff and Appellee,

v.

QUINCY DEAN PFISTER,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, the Honorable Mary Jane Knisley, Presiding

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STATEMENT OF THE ISSUE

Whether the District Court had legal authority to run Quincy Pfister's sentence in this case "consecutive to whatever will occur" in a separate case in which the sentence had not yet been imposed.

STATEMENT OF THE CASE

The State charged Quincy in June 2021 with robbery. (District Court Documents (Docs.) 1, 3.) The case went to trial, and a Yellowstone County jury found Quincy guilty. (Doc. 59.)

The District Court imposed a sentence of thirty years to the Montana State Prison, with ten suspended. (3/1/2023 Sentencing Hearing Transcript (Sentencing Tr.) at 31.) The court also ordered that Quincy's sentence run consecutive to "whatever will occur" in a separate case from Custer County that had not yet concluded. (Sentencing Tr. at 33.) Quincy filed a timely notice of appeal. (Doc. 89.)¹

¹ Quincy was separately charged and convicted of failure to register as a violent offender in Yellowstone County District Court cause number DC 21-0781. The failure to register case and this case had separate trials but shared the same sentencing hearing. Quincy is simultaneously appealing the same sentencing issue in his failure to register case, under DA 23-0557.

STATEMENT OF THE FACTS

The District Court held Quincy’s sentencing hearing on March 1, 2023, which was a Wednesday. At the start of the hearing, the court addressed the fact that Quincy had a separate, unrelated pending criminal matter in Custer County. The court asked Quincy’s counsel, “And may I also inquire, has Mr. Pfister handled his Custer County matter yet?” (Sentencing Tr. at 3.) Quincy’s counsel responded, “That will be handled Friday morning, Your Honor.” (Sentencing Tr. at 3.)

At the conclusion of the hearing, the court orally imposed its sentence of thirty years to the Montana State Prison with ten suspended. (Sentencing Tr. at 31.) The court then pronounced that this sentence “is consecutive to the Custer County case” and shall “run consecutive to whatever *will occur* in Custer County.” (Sentencing Tr. at 33, lines 12–15 (emphasis added).)² The District Court’s subsequent written judgment made no mention of Quincy’s sentence running consecutive to his Custer County case. (Doc. 86 (Judgment, attached as Appendix A).)

² The court also ordered that Quincy’s sentence in this case and in his failure to register case, DC 21-0781, run consecutive to each other. (Sentencing Tr. at 33.)

STANDARD OF REVIEW

The legality of a sentence is a question of law that this Court reviews de novo. *State v. Wolfblack*, 2024 MT 166, ¶ 7, ___ Mont. ___, 553 P.3d 9. This Court permits a defendant to challenge the legality of a sentence for the first time on appeal. *State v. Coleman*, 2018 MT 290, ¶ 7, 393 Mont. 375, 431 P.3d 26.

SUMMARY OF THE ARGUMENT

As of the date of Quincy’s sentencing hearing in this case, he had not yet been sentenced in his Custer County matter. But the District nonetheless ordered that his sentence run consecutive to “whatever will occur” in the Custer County case.

Under Montana law, a court may not order a sentence to run consecutive to another sentence that does not yet exist. The District Court could not lawfully order Quincy’s sentence in this case to run consecutive to his yet-to-be-imposed Custer County sentence.

Although the District Court’s written judgment did not mention this illegal consecutive sentence, its oral pronouncement did, and that is the legally effective sentence. Quincy asks this Court to declare the

offending portion of the oral pronouncement illegal and void and order it stricken from the record.

ARGUMENT

The District Court lacked authority to run Quincy's sentence consecutive to a separate sentence that had not yet been imposed.

Montana statute allows a sentencing court to impose a consecutive sentence on a person who is already “serving a term of commitment imposed by a court.” Mont. Code Ann. § 46-18-401(1)(a). Under this statute, a sentencing court has no authority to impose a sentence “consecutive to another sentence not yet imposed.” *State v. McGuire*, 260 Mont. 386, 388, 860 P.2d 148, 150 (1993). “[O]nly a district court which imposes a sentence *subsequent* to one already imposed has the authority to determine whether the sentences will be concurrent or consecutive to each other.” *McGuire*, 260 Mont. at 387, 860 P.2d at 149 (emphasis in original); *Wolfblack*, ¶ 13.

It was the Custer County District Court's decision whether to run Quincy's sentence in that case consecutive to his sentence in this case, not the other way around. As of the date of the March 1, 2023 sentencing hearing in this case, Quincy's Custer County sentence was

“not yet imposed.” *McGuire*, 260 Mont. at 388, 860 P.2d at 150. The District Court thus illegally pronounced that Quincy’s sentence in this case would run consecutive to his *eventual* Custer County sentence. *Cf. Wolfblack*, ¶ 13; *McGuire*, 260 Mont. at 387, 860 P.2d at 149.

The fact that the written judgment does not reflect this illegality does not make this issue moot. The oral sentence, not the written judgment, is the controlling and legally effective sentence. *State v. Lane*, 1998 MT 76, ¶ 48, 288 Mont. 286, 957 P.2d 9. Correction of the oral pronouncement is necessary to ensure the legality of Quincy’s sentence.

CONCLUSION

The District Court illegally ordered Quincy’s sentence in this case to run consecutive to a Custer County sentence that had not yet been imposed. Quincy respectfully requests that this Court declare this portion of the oral pronouncement illegal and void and strike it from the record.

Respectfully submitted this 16th day of September, 2024.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook 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 943, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Michael Marchesini
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APPENDIX

Judgment.....App. A

Oral Pronouncement of Sentence.....App. B

CERTIFICATE OF SERVICE

I, Michael Marchesini, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 09-16-2024:

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