

DA 23-0468

IN THE SUPREME COURT OF THE STATE OF MONTANA

2025 MT 30

STATE OF MONTANA,

Plaintiff and Appellee,

v.

GARRETT ALAN LEE,

Defendant and Appellant.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DC 22-449
Honorable Jessica T. Fehr, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Penelope S. Strong, Attorney at Law, Billings, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Roy Brown, Assistant
Attorney General, Helena, Montana

Sarah Hyde, Deputy County Attorney, Yellowstone County
Attorney's Office, Billings, Montana

Submitted on Briefs: January 15, 2025
Decided: February 11, 2025

Filed:



Clerk

Chief Justice Cory S. Swanson delivered the Opinion of the Court.

¶1 Garrett Alan Lee appeals from the November 29, 2022 judgment of the Thirteenth Judicial District Court. Lee pleaded guilty to Sexual Abuse of Children pursuant to § 45-5-625(1)(c), MCA. The District Court sentenced Lee to 100 years at the Montana State Prison, with 65 years suspended, and imposed a 25-year parole restriction pursuant to §§ 45-5-625(2)(a), and 46-18-202(2), MCA. We affirm.

¶2 We restate the issues on appeal as follows:

Issue One: Whether Lee’s constitutional or statutory arguments concerning a mandatory 25-year parole restriction pursuant to § 45-5-625(4)(a), MCA, are properly before this Court.

Issue Two: Whether the District Court violated Lee’s due process rights when it considered information from a prior psychosexual examination that was not admitted into evidence.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 On April 12, 2022, Lee, 25 years old, engaged in an online conversation with a person he believed to be a 12-year-old girl.¹ The person was actually an undercover law enforcement officer pretending to be an underage girl. Lee discussed meeting the girl to have sex. On April 14, Lee suggested they go for a drive, get food, talk, and have sex. He assured her he was “very good at sex” and discussed methods of contraception the two could use. He made plans to meet her at a location in Billings that day. When Lee arrived, he was apprehended by law enforcement.

¹ We discuss the facts as presented in the State’s charging documents because Lee pleaded guilty.

¶4 Lee was charged with Sexual Abuse of Children pursuant to § 45-5-625(1)(c), MCA. Pursuant to § 45-5-625(4)(a)(i), MCA, the State also sought a penalty enhancement requiring a term of imprisonment of 100 years with a mandatory 25-year parole restriction when “the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense,” subject to certain exceptions. One exception to the mandatory parole restriction is if “the offender’s mental capacity, at the time of the commission of the offense . . . , was significantly impaired, although not so impaired as to constitute a defense to the prosecution.” Section 46-18-222(2), MCA.

¶5 On July 27, 2022, Lee and the State entered into an open plea agreement in which he acknowledged that “[b]y pleading Guilty I waive my right to appeal or otherwise challenge my conviction by direct appeal.” Lee also acknowledged at his change of plea hearing that he would be waiving his “right to an appeal to the Montana Supreme Court.” Lee pleaded guilty to Sexual Abuse of Children, acknowledging that he knowingly enticed a person he believed to be 12 years old to engage in sexual conduct.

¶6 Lee filed a sentencing memorandum seeking a hearing on whether the mental capacity exception to the sentencing enhancement was applicable in this case. Dr. Dee Woolston completed a psychological evaluation of Lee and reported he had an IQ of 69, which is classified as extremely low and places him below 98% of the population. Lee also filed a motion seeking an order that the sentencing enhancement was not applicable as no actual victim exists.

¶7 The District Court held a hearing on Lee’s mental capacity and his argument that there was no actual victim. The court rejected Lee’s argument that there was no actual

victim, finding that the Legislature did not “intend[] to give Defendants a free pass if it turned out there wasn’t an actual victim.” As to whether the exception to the mandatory minimum under § 46-18-222(2), MCA, applied, the court found that “[a]ll of the testimony has indicated that there was significant impairment in [Lee’s] mental capacity at the time the crime was committed.” It thus found that the exception applied, and Lee would not be sentenced pursuant to § 45-5-625(4)(a), MCA.

¶8 After Lee and the State made its sentencing recommendations, the court imposed its sentence. It discussed that Lee was a very dangerous individual because of his poor judgment, ability to manipulate, dishonesty, impulsivity, and failure to accept responsibility. The court thus sentenced Lee to 100 years at Montana State Prison and suspended 65 years pursuant to § 45-5-625(2)(a), MCA. The court also imposed “its own 25-year parole restriction” based on the safety needs of the community pursuant to § 46-18-202(2), MCA, and clarified it was *not* pursuant to the mandatory minimum in § 45-5-625(4)(a), MCA, that it had already found inapplicable in this case. In its judgment, the court further clarified that the mandatory minimum did not apply under § 45-5-625(4)(a), MCA, but that the 25-year parole restriction was pursuant to its discretion under § 46-18-202(2), MCA. Lee appeals his sentence.²

² Lee also filed an application for sentence review with the Sentence Review Division of the Montana Supreme Court, which has been vacated pending this appeal.

STANDARD OF REVIEW

¶9 We review a district court’s sentence for legality only, confining our review to whether the sentence falls within parameters set by statute. *State v. English*, 2006 MT 177, ¶ 55, 333 Mont. 23, 140 P.3d 454.

DISCUSSION

¶10 *Issue One: Whether Lee’s constitutional or statutory arguments concerning a mandatory 25-year parole restriction pursuant to § 45-5-625(4)(a), MCA, are properly before this Court.*

¶11 Lee argues that the mandatory sentencing enhancements pursuant to § 45-5-625(4)(a), MCA, are unconstitutional under both Article II, Section 22, of the Montana Constitution, prohibiting cruel and unusual punishments, and Article II, Section 28, requiring laws for the punishment of crime to be founded on principles of prevention, reformation, public safety, and restitution. Lee also argues that the District Court erred in finding that a “victim” as used in the sentencing enhancement in § 45-5-625(4)(a), MCA, includes a fictitious person.

¶12 Lee’s constitutional and statutory arguments concerning the mandatory minimum under § 45-5-625(4)(a), MCA, are not properly before us. In *State v. Webb*, 2005 MT 5, ¶ 28, 325 Mont. 317, 106 P.3d 521, we held that a defendant lacked standing to challenge the constitutionality of a statute under which he was not sentenced. “A defendant must show a direct, personal injury resulting from application of the law in question in order to successfully challenge the constitutionality of a criminal statute.” *Webb*, ¶ 28 (citing *State v. Krantz*, 241 Mont. 501, 506, 788 P.2d 298, 301 (1990)); see also *State v. Goodwin*, 208 Mont. 522, 530, 679 P.2d 231, 235 (1984) (declining to review arguments where

defendant was not subjected to any of the alleged constitutional errors); *State v. Thaut*, 2004 MT 359, ¶¶ 16–17, 324 Mont. 460, 103 P.3d 1012.

¶13 It is clear here that Lee cannot show a direct, personal injury resulting from the application of § 45-5-625(4)(a), MCA. The District Court explicitly did not sentence him under subsection (4)(a). Instead, the District Court sentenced Lee under § 45-5-625(2)(a), MCA, which dictates a life sentence or imprisonment “for a term not to exceed 100 years.” The court imposed a 100-year prison term, with 65 years suspended, which is within the statutory sentencing parameters of a sentence “not to exceed 100 years.” *See State v. Ford*, 278 Mont. 353, 364, 926 P.2d 245, 251 (1996) (declining to review legal 100-year sentence within statutory maximum of 100 years, proper forum to challenge sentence as inequitable is Sentence Review Division). Additionally, the District Court imposed a 25-year parole restriction under its discretionary sentencing power pursuant to § 46-18-202(2), MCA: “Whenever the sentencing judge imposes a sentence of imprisonment . . . exceeding 1 year, the sentencing judge *may* also impose the restriction that the offender is ineligible for parole . . . while serving that term.” (Emphasis added.) This is also a legal sentence. *See State v. Bull*, 2017 MT 247, ¶¶ 11–17, 389 Mont. 56, 403 P.3d 670 (affirming discretionary parole restriction within statutory maximum as legal). Lee was not sentenced under § 45-5-625(4)(a), MCA. We decline to address his constitutional and statutory arguments regarding it. “A sentence is not illegal when it is within the parameters provided by statute.” *Ford*, 278 Mont. at 364, 926 P.2d at 251. His sentence under §§ 45-5-625(2)(a), and 46-18-202(2), MCA, was legal, to which we confine our review.

Lee has already applied for review of his sentence at the Sentence Review Division, where he can direct any arguments relating to the inequity of his sentence. *Bull*, ¶ 13.

¶14 *Issue Two: Whether the District Court violated Lee's due process rights when it considered information from a prior psychosexual examination that was not admitted into evidence.*

¶15 Lee next argues for the first time on appeal that the District Court violated his due process rights when it relied in part on a partial psychosexual evaluation recounted in his presentence investigation report (PSI) that was not fully admitted into evidence at his sentencing hearing.

¶16 We generally do not review matters not objected to at the district court. *State v. Beaudet*, 2014 MT 152, ¶ 16, 375 Mont. 295, 326 P.3d 1101. However, we may discretionarily review claimed errors that implicate a defendant's fundamental constitutional rights under plain error review. *State v. Lackman*, 2017 MT 127, ¶ 9, 387 Mont. 459, 395 P.3d 477. We will only exercise plain error review where failing to review the claimed error may result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the proceedings, or compromise the integrity of the judicial process. *Lackman*, ¶ 9. We invoke plain error review sparingly, on a case-by-case basis, and only in this narrow class of cases. *Lackman*, ¶ 9.

¶17 Lee asks us to invoke plain error review of his claimed due process error. In imposing a sentence, the district court is given a wide scope of inquiry and may consider any relevant evidence relating to the nature and circumstances of the crime, the defendant's character, background history, mental and physical condition, and any evidence the court deems has probative force. *State v. Klippenstein*, 239 Mont. 42, 45, 778 P.2d 892, 894

(1989); § 46-18-115(1), MCA. The information received is not limited by the Rules of Evidence. *Klippenstein*, 239 Mont. at 45, 778 P.2d at 894. “The right to due process includes the right of a defendant to explain, argue and rebut any information which may lead to a deprivation of life or liberty.” *State v. Simmons*, 2011 MT 264, ¶ 11, 362 Mont. 306, 264 P.3d 706. A defendant also has a due process guarantee against a sentence premised on materially false information. *Simmons*, ¶ 11.

¶18 After Lee pleaded guilty, the District Court ordered a PSI and a psychosexual evaluation. Section 46-18-111(1)(a)(i), (1)(b), MCA. Michael Sullivan prepared the psychosexual evaluation. In addition to Sullivan’s psychosexual evaluation, Lee’s PSI quoted from a prior psychosexual evaluation completed by Christopher Quigley in 2020 when Lee was in a Missoula prerelease center. Sullivan testified at sentencing that he had reviewed Quigley’s prior psychosexual evaluation. Sullivan testified that Quigley’s evaluation “confirm[ed] the concerns that were noted in” his psychosexual evaluation but that he had only had the opportunity to review it “well after” he had completed his own evaluation. Sullivan further testified that with the information contained in the Quigley report, an evaluator might have bumped up Lee’s risk level a couple of points but that the overall risk level and recommendation “really wouldn’t change.”

¶19 Lee did not have any objections, corrections, or modifications to his PSI, though Lee disputed that he has previously received a copy of the Quigley evaluation. He now argues that it was a due process violation to include this partial report, not admitted into evidence, in his PSI. But the Rules of Evidence do not apply at sentencing hearings. *Klippenstein*, 239 Mont. at 45, 778 P.2d at 894. Additionally, the district court is given a

wide scope of inquiry in sentencing. *Klippenstein*, 239 Mont. at 45, 778 P.2d at 894. Due process requires that the defendant have an opportunity to explain, argue, and rebut any information in the PSI. *Simmons*, ¶ 11. Lee was given this opportunity at sentencing. His due process rights were satisfied. The District Court may not rely on materially false information during sentencing. *Simmons*, ¶ 11. Lee did not argue, and does not now argue, that any information in the Quigley examination was false. We do not find plain error review warranted here.

¶20 Lee relies on *State v. Baker*, 205 Mont. 244, 247–50, 667 P.2d 416, 418–19 (1983). There, the sentencing judge sentenced the defendant based on private, out-of-court information he had received. The judge had received an anonymous phone call on Baker’s behalf and the judge then made another call to a colleague of Baker who discussed evidence not in the record. We analogized several similar cases where we had reversed. We discussed *State v. Stewart*, 175 Mont. 286, 573 P.2d 1138 (1977), where the trial judge had personally interviewed several persons at undisclosed locations, off the record, and without notice to the defendant thus becoming a fact-gatherer rather than just a fact-finder, which subjected the defendant to an impossible burden. We also noted our holding from *State v. Simtob*, 154 Mont. 286, 292, 462 P.2d 873, 876 (1969), that “the discretion of the sentencing judge must be based on his view of the evidence presented in open court . . . and may not be exercised on the basis of unsworn representations privately received by the sentencing judge.” In another similar case, we noted the sentencing judge had held private conference in chambers with unspecified parties. We thus remanded for resentencing with

a new judge based on the similar situation presented there. *Baker*, 205 Mont. at 250, 667 P.2d at 419.

¶21 The situation here is distinguishable. The PSI was presented in open court. The partial Quigley examination was not received privately by the sentencing judge. Lee had an opportunity to review it prior to sentencing and to rebut or correct any information included in it, including the information contained in the quoted portions of Quigley’s examination. Lee merely argues that “[a] partial quote, from such an important document, is unreliable and subject to false information being utilized by a sentencing court.” Notably, Lee did not allege any of the information contained in the PSI was false, either at sentencing or here. *Accord Webb*, ¶¶ 19–20 (“[T]he presentencing information was fully disclosed in open court, he had the ability to present evidence, to confront witnesses and to participate in the sentencing proceeding. We conclude the sentencing court offered all procedural due process necessary.”).

¶22 Additionally, PSIs are required to include a “defendant’s criminal record and social history” and his characteristics. Section 46-18-112(1)(a)–(b), MCA. They may include information including prior criminal history, probation history, background, and physical and mental health. Section 46-18-112(2), MCA. “All local and state mental and correctional institutions, courts, and law enforcement agencies shall furnish” relevant information to the PSI author. Section 46-18-112(3), MCA. The court must also order a psychosexual examination of a defendant convicted under § 45-5-625, MCA, which includes a consideration of the risk the defendant poses to the community. Section 46-18-111(1)(b)(i)(A), MCA.

¶23 In *State v. Legg*, 2004 MT 26, 319 Mont. 362, 84 P.3d 648, we concluded that a psychosexual evaluator was able to evaluate statements and evidence submitted to the parole officer, and included in the defendant’s PSI, which made apparent that Legg had not been entirely candid with him. *Legg*, ¶¶ 18, 20, 32. We held the district court did not err in refusing to exclude this information from the PSI. *Legg*, ¶ 33. The additional information in *Legg* made the evaluator (also Sullivan) reclassify Legg’s risk classification from a level one to a level two sexual offender. *Legg*, ¶ 32. The defendant in *Legg* was even more prejudiced by the inclusion of additional information in the PSI than here, where the additional information did not change Sullivan’s assessment of Lee’s risk level.

¶24 The District Court was entitled to rely on the information contained in the PSI during sentencing. Prior psychosexual examinations are certainly within the scope of a PSI. Lee has not shown that any information was materially false. Nor has Lee persuaded us that failing to review the claimed error may result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the proceedings, or compromise the integrity of the judicial process. *Lackman*, ¶ 9. “A criminal defendant cannot be heard to complain where the information in a presentence report is true.” *Bauer v. State*, 1999 MT 185, ¶ 27, 295 Mont. 306, 983 P.2d 955. We decline to invoke plain-error review here.

CONCLUSION

¶25 We decline to review constitutional or statutory claims under a sentencing provision that was not applied to a defendant. We further decline to invoke plain-error review of a procedural due process claim where Lee was given an opportunity to rebut or correct any

information contained in the PSI and does not argue that any information was manifestly wrong.

¶26 Affirmed.

/S/ CORY J. SWANSON

We Concur:

/S/ LAURIE McKINNON

/S/ KATHERINE M BIDEGARAY

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ INGRID GUSTAFSON

/S/ JIM RICE