

DA 07-0331

IN THE SUPREME COURT OF THE STATE OF MONTANA

2008 MT 96N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JAMES EDWARD SULLIVAN,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DC-2001-310
Honorable Edward P. McLean, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Edmund F. Sheehy, Jr., Public Defender, Missoula, Montana

For Appellee:

Hon. Mike McGrath, Attorney General; Mark W. Mattioli, Assistant
Attorney General, Helena, Montana

Fred R. Van Valkenburg, Missoula County Attorney; Suzy Boylan, Deputy
County Attorney, Missoula, Montana

Submitted on Briefs: January 16, 2008

Decided: March 18, 2008

Filed:

Clerk

Justice John Warner delivered the Opinion of the Court.

¶1 Pursuant to Section 1, Paragraph 3(d)(v), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and its case title, Supreme Court cause number and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 James Sullivan appeals a judgment of the Fourth Judicial District Court, Missoula County, revoking his suspended sentence.

¶3 In 2001, the State charged Sullivan with three criminal counts, including Felony Assault with a Weapon. He later pled guilty to the assault charge and, in exchange, the State dismissed the other charges and recommended a seven-year suspended sentence. The District Court sentenced Sullivan to seven years at Montana State Prison with all seven years suspended.

¶4 The State filed a petition to revoke Sullivan's sentence in November 2002, and Sullivan admitted to the violations. The District Court revoked his probation and committed him to the Department of Corrections (DOC) for seven years with a recommendation that DOC place him at Connection Corrections.

¶5 In March 2007, the State filed another petition to revoke his suspended sentence, and Sullivan admitted to the violations. The District Court sentenced Sullivan to DOC for three years with a recommendation that DOC place him at Montana State Prison. Sullivan now appeals, arguing that the placement recommendation exceeded the District Court's statutory authority.

¶6 We review a sentence only for legality to determine if it is within the statutory parameters. *State v. Micklon*, 2003 MT 45, ¶ 5, 314 Mont. 291, ¶ 5, 65 P.3d 559, ¶ 5.

¶7 A defendant must be sentenced under the laws in effect at the time of his offense. *State v. Tracy*, 2005 MT 128, ¶ 16, 327 Mont. 220, ¶ 16, 113 P.3d 297, ¶ 16. At the time Sullivan committed this offense, the applicable sentencing statute permitted a court to commit a defendant to DOC “with a recommendation for placement in an appropriate correctional facility or program.” Section 46-18-201(3)(d)(i) (1999). The 1999 statutes also provided that a district court may impose, upon revocation, the original sentence or a lesser sentence. Section 46-18-203(7)(a)(iii) (1999).

¶8 The District Court revoked Sullivan’s suspended sentence and sentenced him in accordance with the laws in effect when he committed the offense. Section 46-18-201(3)(d)(i) (1999) permitted the District Court to make a recommendation for Sullivan’s placement, and that is precisely what the District Court did when it recommended that DOC place Sullivan at Montana State Prison. The DOC was not obligated to follow the recommendation. In addition, the sentence of three years was no greater than the original sentence. Therefore, the District Court imposed a legal sentence on Sullivan when it revoked his suspended sentence.

¶9 Affirmed.

/S/ JOHN WARNER

We Concur:

/S/ JIM RICE
/S/ JAMES C. NELSON
/S/ PATRICIA COTTER
/S/ W. WILLIAM LEAPHART