DA 17-0170

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 216N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DANIEL JOSEPH DEGELE,

Defendant and Appellant.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DC 14-1008
Honorable Russell C. Fagg, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Moses Okeyo, Assistant Appellate Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Tammy A. Hinderman, Assistant Attorney General, Helena, Montana

Scott D. Twito, Yellowstone County Attorney, Julie Mees, Deputy County Attorney, Billings, Montana

Submitted on Briefs: August 15, 2018

Decided: September 4, 2018

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of non-citable cases published in the Pacific Reporter and Montana Reports.

¶2 Daniel Joseph Degele (Degele) appeals the sentence imposed by the Thirteenth Judicial District Court, Yellowstone County, after he pleaded guilty to two counts of felony sexual intercourse without consent. We affirm in part, reverse in part, and remand for correction of the judgment.

¶3 Degele's then six-year-old niece reported that Degele penetrated her vagina with his finger in June 2013, causing pain. Degele denied this, though he later admitted he had touched her vagina. In November 2013, Degele's twenty-three-month-old daughter was brought to the emergency room with a bloody diaper. Degele eventually admitted he had penetrated her vagina and anus with his penis, offering that he was "possessed" or "forced" by a "demon" or an "evil force." Degele caused significant injury during the assault. His daughter was flown to Denver for emergency surgery and will suffer permanent complications. Degele was originally charged with felony sexual assault for touching his niece, and two counts of felony sexual intercourse without consent (SIWOC) for his assaults upon his daughter.

¶4 As part of a plea agreement, Degele pled guilty to the two counts of SIWOC, in exchange for dismissal of the sexual assault charge involving his niece and the State's

sentencing recommendation of concurrent one-hundred-year sentences, with sixty years suspended, for each count. The District Court ordered a psychosexual and mental health evaluation of Degele, who was admitted to the Forensic Mental Health Facility (FMHF) at the Montana State Hospital. Degele was diagnosed with pedophilia, schizophrenia, and developmental deficiencies.

¶5 At the sentencing hearing, Dr. Virginia Hill, a psychiatrist at Montana State Hospital, opined that Degele was psychotic at the time of the crime against his daughter, that his experience of "voices and demons contributed to his compromised capacity to conform his behavior to the requirement of the law," and that his capacity to appreciate the criminality of his behavior was also compromised, though not as severely. Dr. Hill acknowledged Degele's case was a difficult one, given some indication that Degele was exaggerating his symptoms, but nonetheless offered these conclusions to a reasonable degree of medical certainly. Dr. Hill recommended Degele be committed to the Director of the Department of Public Health and Human Services (DPHHS) on a "guilty but mentally ill" sentence, with initial placement at FMHF. Dr. Hill noted her assumption that "Jessica's Law" would apply to Degele, meaning he would not be eligible for parole for twenty-five years. *See* § 45-5-503(4)(a)(i), MCA (2013). She also explained that the Director of DPHHS could ultimately transfer Degele to the Montana State Prison upon certain statutory findings, though she indicated such a transfer would not be common.

¶6 The prosecutor made a sentencing recommendation in accordance with the plea agreement, including that Degele be committed to the Director of DPHHS for a "guilty but mentally ill" placement. The prosecutor urged that, if Degele became medically stabilized,

he should be transferred to the Montana State Prison for the remainder of his term. The prosecutor also noted that Jessica's Law applied, meaning Degele would not be eligible for parole for twenty-five years.

¶7 Degele's counsel likewise recommended that Degele be committed to the Director of DPHHS, but urged the Court to allow DPHHS to determine when Degele could be released. Defense counsel also argued that, because this was a commitment to DPHHS, the mandatory minimum sentence need not apply, including the twenty-five-year restriction upon parole eligibility.

¶8 At the conclusion of the hearing, the District Court expressed its substantial concerns about Degele's crimes and his victims, reasoning:

> [Y]ou have changed two lives forever. They will never be the same, and that's for the rest of their life. On top of that you've changed two families forever through your action, and truthfully I've been at this job for almost 22 years, and this is, if not the most atrocious, certainly one of the most atrocious crimes that I have been a part of. . . . Mr. Degele, this is an incredibly sad case, of course, for you, but more importantly for the victims.

The District Court then concluded:

> I take Dr. Hill at her word as I said. I trust her judgment that you were psychotic at the time of this crime. To be honest I have a hard time understanding or even believing your explanation that you were possessed by demons in some way. It's my conclusion that Jessica's Law does apply, and it's my conclusion that none of the exceptions apply under Jessica's Law to your case. . . . [T]here is no parole eligibility for the first 25 years.

The District Court sentenced Degele to the custody of DPHHS for 100 years on each count, to run concurrently, suspending sixty years on each count. The District Court added:

> Because of the fact that you're guilty, but mentally ill under Montana law, I will recommend that you stay at the Forensic Mental Health Facility until

> you become mentally stable. At that time, it would be my recommendation that you serve the remainder of your term in the Montana State Prison.

The District Court designated Degele a level two sex offender, ordered him to complete psychiatric and sex offender treatment, and ordered he have no contact with the victims, nor any unsupervised contact with any minor child during his sentence. Degele raises the following issues on appeal.

¶9 This Court "will only review a criminal sentence for its legality; that is, whether the sentence is within statutory parameters." *State v. Webb*, 2005 MT 5, ¶ 8, 325 Mont. 317, 106 P.3d 521 (citations omitted).

Twenty-five year parole restriction

¶10 Degele argues the twenty-five-year restriction on parole eligibility is illegal because parole restrictions are not authorized on commitments to DPHHS. In support of his position, Degele cites § 46-18-202(2), MCA, which provides, in part:

> Whenever the sentencing judge *imposes a sentence of imprisonment in a state prison* for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term.

(Emphasis added.) We have held that when a judge commits a defendant to the custody of the Department of Corrections, rather than imposing a sentence of imprisonment in a state prison, the judge is not authorized to impose parole restrictions under this statute. *State v. Bekemans*, 2013 MT 11, ¶ 49, 368 Mont. 235, 293 P.3d 843. Degele thus contends that his commitment to DPHHS is analogous to a commitment to the Department of Corrections, and his parole restriction exceeds the authority granted by § 46-18-202(2), MCA, to restrict parole eligibility on prison sentences.

¶11 The State responds that the District Court did not impose a discretionary parole restriction under § 46-18-202(2), MCA, but rather imposed a sentence authorized by § 45-5-503(4)(a)(i), MCA, sometimes referred to as "Jessica's Law," which provides that an adult offender convicted of SIWOC upon a child:

> [S]hall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and *during the first 25 years of imprisonment, the offender is not eligible for parole*.

Section 45-5-503(4)(a)(i), MCA (2013) (emphasis added).[1]

¶12 The State's argument that Degele was not sentenced under § 46-18-202(2), MCA, is correct. Rather, Degele was sentenced pursuant to § 46-14-312, MCA, which governs sentencing commitments to DPHHS. Although that statute provides that "any mandatory minimum sentence prescribed by law for the offense need not apply," § 46-14-312(2), MCA, Degele incorrectly argues that parole restrictions on DPHHS commitments are not authorized. While the "need not apply" language provides an option for a sentencing court to depart from applicable mandatory minimum provisions in commitment cases, it does not prohibit or otherwise remove the sentencing court's authority to impose the minimums as appropriate. Thus, the District Court had statutory authority to impose the twenty-five year restriction on parole eligibility set forth in § 45-5-503(4)(a)(i), MCA, for Degele's crimes—and did so.

[1] The Legislature has since amended § 45-5-503(4)(a)(i), MCA (2017), to require a minimum parole restriction of only ten years, rather than twenty-five. This amendment "applies to offenses committed after June 30, 2017." 2017 Mont. Laws 321.

¶13 The record demonstrates the District Court imposed the parole restriction pursuant to § 45-5-503(4)(a)(i), MCA, orally stating "that Jessica's Law does apply," that "none of the exceptions apply under Jessica's Law to your case," and that "there is no parole eligibility for the first 25 years." The prosecutor, defense counsel, and Dr. Hill all referenced the twenty-five year parole restriction under Jessica's Law as being applicable to Degele's sentence, although defense counsel correctly stated that the mandatory minimum sentences, including the restriction on parole, need not apply to Degele's commitment to DPHHS. Consistent with the oral imposition of sentence, the written judgment provided "the penalty under § 45-5-503(4) applies." Review of the sentencing hearing as a whole, including the District Court's pointed sentencing rationale and recommendations, quoted above, demonstrates the District Court clearly believed the parole restriction was not only applicable but necessary, and its imposition of the parole restriction was a proper exercise of its discretionary sentencing authority.

Recommendation of transfer to Montana State Prison

¶14 Degele argues the District Court made an illegal recommendation. After recommending that Degele be placed at FMHF until he became mentally stable, the District Court stated, "[a]t that time, it would be my recommendation that you serve the remainder of your term in the Montana State Prison," and ordered that Degele "complete Phase 1 and Phase 2 of Sex Offender Treatment before [being] considered for parole eligibility." Degele argues the prison recommendation is "pre-emptory" and "curtails the authority" of the Director of DPHHS set forth in § 46-14-312(2), MCA, which provides, in part:

> The director may, after considering the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, subsequently transfer the defendant to another correctional, mental health, residential, or developmental disabilities facility that will better serve the defendant's custody, care, and treatment needs.[2]

¶15 The State responds that this was merely a recommendation by the District Court, was not binding on the Director of DPHHS, and is not illegal. The State likens this recommendation to a sentencing court's non-binding recommendation to the parole board regarding conditions of parole, which we have upheld absent a statutory provision authorizing such recommendations. *See*, *e.g.*, *State v. Winter*, 2014 MT 235, ¶ 24, 376 Mont. 284, 333 P.3d 222 ("[a] district court possesses the authority to make non-binding recommendations to the Department of Corrections' Board of Pardons and Parole as part of its judgment" (citations omitted)); *see also State v. Champagne*, 2013 MT 190, ¶ 52, 371 Mont. 35, 305 P.3d 61; *State v. Heafner*, 2010 MT 87, ¶ 13, 356 Mont. 128, 231 P.3d 1087.

¶16 We agree with the State and conclude the District Court did not err in making the recommendations to the Director of DPHHS regarding Degele's placement following psychiatric treatment.[3]

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[2] The statute also authorizes DPHHS to petition the sentencing court for review of the sentence in several instances, including if it is believed that the defendant will no longer benefit from treatment. *See* § 46-14-312(3), MCA.

[3] The District Court's recommendation was supported by the testimony of the psychosexual evaluator, who opined that Degele's treatment needs would be best addressed at Montana State Prison following his inpatient psychiatric treatment.

Conceded sentencing issues

¶17 Degele raises two issues that are conceded by the State. The District Court orally ordered Degele to have no contact with the victims and to have no *unsupervised* contact with any other minor children for the entirety of his sentence. However, the written judgment prohibited Degele from having any contact with, not only his victims, but any minor children for the entirety of his sentence, and conditioned any release upon this prohibition. This inconsistency between the oral pronouncement and the written judgment must be corrected to conform to the oral pronouncement. The State concedes this issue and we thus remand the matter for the District Court for entry of an amended judgment.

¶18 The District Court imposed an IT fee of ten dollars per count. The State concedes that the IT fee may only be imposed on a per user basis and upon remand this may be corrected in the amended judgment, imposing only one ten-dollar technology fee.

¶19 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law. The District Court's interpretation and application of the law were correct.

¶20 Affirmed and remanded for entry of an amended judgment.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ LAURIE McKINNON