

DA 17-0344

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 249N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ALLISON CAMILLE THOMPSON,

Defendant and Appellant.

APPEAL FROM: District Court of the Ninth Judicial District,
In and For the County of Pondera, Cause No. DC 15-10
Honorable Robert G. Olson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Kristina L. Neal, Assistant Appellate
Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Roy Brown, Assistant
Attorney General, Helena, Montana

Mary Ann Ries, Pondera County Attorney, Conrad, Montana

Submitted on Briefs: September 12, 2018

Decided: October 9, 2018

Filed:



Clerk

Justice Ingrid Gustafson 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 noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Allison Camille Thompson (Thompson) appeals from the April 17, 2017 Sentencing Order of the Ninth Judicial District Court, Pondera County, which revoked Thompson's deferred imposition of sentence. We affirm.

¶3 On June 16, 2016, the District Court deferred imposition of sentence for a period of five years for Thompson's conviction of endangering the welfare of a child. On February 27, 2017, the District Court held a revocation hearing, at which it found Thompson had violated conditions of her deferred sentence. It revoked the deferred imposition of sentence and imposed a five-year commitment to the Department of Corrections (DOC), but recommended placement at Elkhorn or a similar chemical dependency treatment program. The court orally advised Thompson, "If you successfully complete that treatment program and successfully complete your stint at prerelease, and then after that's done, you're successful on probation, after 36 months . . . you can petition the court for an early release, alright?" The court's subsequent written Sentencing Order is silent about the possibility of early release at 36 months.

¶4 We review a criminal sentence de novo for legality and compliance with statutory mandates. *State v. Youpee*, 2018 MT 102, ¶ 4, 391 Mont. 246, 416 P.3d 1050 (citation

omitted). A sentence is not illegal if it falls within statutory parameters. *State v. Hinshaw*, 2018 MT 49, ¶ 7, 390 Mont. 372, 414 P.3d 271 (citation omitted).

¶5 Here, Thompson argues she is entitled to resentencing because the written order allegedly does not comport with the sentence the District Court orally pronounced, and if there is a discrepancy between the oral pronouncement and written judgment, the oral pronouncement controls. *State v. Lane*, 1998 MT 76, ¶¶ 40, 48, 288 Mont. 286, 957 P.2d 9. Thompson further argues the District Court's oral pronouncement was an illegal sentence because the court ordered her to be both sentenced to DOC and placed on probation, and further ordered that she could petition for early release after 36 months. Thompson maintains that the court had no statutory authority to sentence her to DOC for a set period of years and then petition for an early release. Thompson thus asserts this Court should remand her case for resentencing. *State v. Hicks*, 2006 MT 71, ¶ 44, 331 Mont. 471, 133 P.3d 206 (remanded for resentencing where the illegal portion of the sentence affected the entire sentence).

¶6 The State responds that the oral pronouncement and written judgment are not in conflict, each mandating a five-year commitment to DOC with the recommendation of participation in a chemical dependency treatment program. The State characterizes the District Court's comments at sentencing as a mere explanation as to how Thompson could progress through her sentence. The State disputes Thompson's characterization of the oral pronouncement as conditioning her sentence on petitioning for early release in 36 months, maintaining the District Court did not impose this as a condition.

¶7 We agree with the State. Having reviewed the transcript of the sentencing hearing, along with the District Court's written Sentencing Order, we find no conflict. Both orally and in writing, the District Court sentenced Thompson to a five-year DOC commitment with a recommendation for placement in a chemical dependency treatment program. Although the court advised Thompson that, if successful in the terms of her incarceration, she could petition for early release in 36 months, it did not condition her sentencing, either orally or in writing, on her later petitioning. Thus, the sentences are not in conflict.

¶8 We further hold Thompson's sentence was not an illegal sentence. Under § 46-18-201(3)(a)(iv)(A), MCA, a sentencing judge may impose a sentence that includes commitment to DOC for up to five years with a recommendation for placement in an appropriate correctional facility or program. Here, the District Court sentenced Thompson to a five-year DOC commitment with a recommendation for placement at Elkhorn or a similar chemical dependency treatment program. This sentence falls within the parameters permitted under the statute.

¶9 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 or by the clear application of applicable standards of review.

¶10 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ DIRK M. SANDEFUR