

DA 18-0104

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 197N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

CLINTON SPROLES,

Defendant and Appellant.

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APPEAL FROM: District Court of the Second Judicial District,  
In and For the County of Butte-Silver Bow, Cause No. DC-17-46  
Honorable Kurt Krueger, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Michael Marchesini, Assistant  
Appellate Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Mardell Ployhar, Assistant  
Attorney General, Helena, Montana

Eileen Joyce, Butte-Silver Bow County Attorney, Kelli J. Fivey, Deputy  
County Attorney, Butte, Montana

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Submitted on Briefs: July 10, 2019

Decided: August 14, 2019

Filed:

  
Clerk

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Chief Justice Mike McGrath 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 Clinton Sproles appeals his designation and sentence as a Persistent Felony Offender (PFO) by the Second Judicial District Court, Butte-Silver Bow County. We affirm.

¶3 On February 25, 2017, Sproles was arrested for driving under the influence (DUI) and the State charged him with felony DUI pursuant to § 61-8-401, MCA. At the time he was charged, Sproles had a total of twenty prior DUI convictions spanning from 1980 to 2008. At an April 6, 2017 arraignment, Sproles pleaded guilty to felony DUI. That same day, the State filed a notice of its intent to have Sproles designated as a PFO, based on his 2008 felony DUI conviction. Sproles filed a motion to strike the State's PFO notice as untimely. He additionally argued that if the court applied a PFO enhancement, he was entitled to sentencing under the 2017 ameliorative amendment to the statutory PFO definition, instead of the more severe 2015 definition. The District Court denied both arguments and on December 21, 2017, the court designated Sproles as a PFO and sentenced him to twenty-five years in prison, with no time suspended, to run

consecutively to the seventeen years remaining from his prior 2008 DUI conviction. Sproles appeals.

¶4 This Court reviews a criminal sentence imposing over one year of incarceration for legality. *State v. Moore*, 2012 MT 95, ¶ 10, 365 Mont. 13, 277 P.3d 1212. The District Court's designation of Sproles as a PFO is a question of law that we review for correctness. *State v. Thomas*, 2019 MT 155, ¶ 5, 396 Mont. 284, \_\_\_ P.3d \_\_\_.

¶5 Sproles maintains that the District Court erred when it sentenced him under § 46-18-501, MCA (2015), instead of the revised 2017 PFO statutory scheme, because he was legally entitled to benefit from the ameliorative changes to the PFO definition. Section 46-18-501, MCA (2015), defined PFO as an offender that had one prior felony conviction within five years of the commission of the present offense or had been released from a commitment imposed for the prior felony conviction within the last five years. *Thomas*, ¶ 3. However, around the time of Sproles' 2017 DUI arrest, the 2017 Montana Legislature passed HB 133, which altered the definition of PFO. *Thomas*, ¶ 3. The new definition requires two predicate felony convictions before the State may seek a PFO designation. Further, one of the three prior felonies must be a sexual or violent offense before the State can request the sentencing enhancement. *Thomas*, ¶ 3; § 46-1-202(18), MCA (2017). Sproles' criminal history does not fit within the revised PFO definition considering none of his prior felonies fall within the statutory definition of sexual or violent offenses. Accordingly, Sproles contends that because the 2017 change was passed prior to his sentencing, the District Court erred in applying the allegedly outdated PFO definition.

¶6 This issue was recently addressed in *Thomas*. In *Thomas*, this Court upheld a PFO sentence under the 2015 statute even though the sentencing took place after the enactment of the 2017 amendment, based on the maxim that “prior law remains effective for prior offenses.” *Thomas*, ¶ 10. *Thomas* clarified that the plain language of HB 133 “unquestionably provide[s] that the revisions enacted by the Act [do] not apply to offenses committed prior to July 1, 2017.” *Thomas*, ¶ 9; 2017 Mont. Laws ch. 321, §§ 43-44. Sproles’ DUI arrest occurred on February 25, 2017, approximately four months before the July 1, 2017 deadline. Therefore, the court properly sentenced Sproles under § 46-18-501, MCA (2015), and the ameliorative 2017 amendment did not apply.

¶7 The District Court did not err in designating Sproles as a PFO pursuant to § 46-18-501, MCA (2015).

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues, of first impression, and does not establish new precedent or modify existing precedent.

¶9 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ DIRK M. SANDEFUR

/S/ BETH BAKER

/S/ JIM RICE

Justice Beth Baker, concurring.

¶10 I dissented in *Thomas* and continue to believe that the 2017 PFO statute should apply to offenders sentenced after its effective date. Because *Thomas* is now the controlling law, however, I am bound by it and join the Court's Opinion today.

/S/ BETH BAKER