

DA 19-0179

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 295N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

SHANNON MARIE CHARLES,

Defendant and Appellant.

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APPEAL FROM: District Court of the Fourth Judicial District,  
In and For the County of Missoula, Cause No. DC 99-13643  
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Martin W. Judnich, Judnich Law Office, Missoula, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Michael P. Dougherty,  
Roy Brown, Assistant Attorneys General, Helena, Montana

Kirsten Pabst, Missoula County Attorney, Jennifer Clark, Deputy County  
Attorney, Missoula, Montana

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Submitted on Briefs: December 4, 2019

Decided: December 24, 2019

Filed:

  
Clerk

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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 Shannon Charles (Charles) appeals from the Order on Motion to Clarify Defendant's Restitution issued January 25, 2019, by the Fourth Judicial District Court, Missoula County. We reverse and remand for imposition of the Order Amending Judgment issued by the District Court on June 26, 2017.

¶3 Pursuant to a written plea agreement, Charles pled guilty to Theft, Attempted Theft, and Burglary in 1999. She was sentenced on October 8, 1999. At sentencing, Charles was ordered to pay \$98,365.63 in restitution, along with interest at the rate of 10%. Pursuant to a stipulation following issuance of the written judgment, the interest rate was amended to 7.5%. On March 6, 2002, Charles petitioned, due to financial hardship, for modification of the restitution. Following hearing, the District Court amended the interest rate to 7%. Thereafter, Charles diligently made payments on the restitution ordered.

¶4 Over 12 years later, on December 5, 2014, Charles filed a Petition for Modification of Restitution—requesting a waiver of interest on the restitution amount—which was denied. Two years later, on February 16, 2017, Charles's probation officer filed a letter with the District Court advising Charles had paid a total of \$103,525.82 in restitution to date, noting she had done so on a waitress's salary and with family help despite being

diagnosed with breast cancer in 2015; undergoing bilateral mastectomies and reconstructive surgery in 2015 and a hysterectomy in 2017; and her father, who had helped her financially, being diagnosed with cancer. Charles's probation officer reported her adjustment to supervision had been exceptional and suggested waiver of the remainder of restitution, interest, and fees was appropriate based upon her ability to pay and considerable previous payments. Thereafter, on April 27, 2017, Charles filed an Unopposed Motion to Amend the Amended Judgment, requesting the District Court recalculate interest based upon the payments she had made as well as clarify that the calculation of interest from the base restitution be "simple" interest (citing § 25-9-205(1), MCA, prohibiting compound interest), finalize a new restitution figure of \$11,161.98, and waive any remaining interest. Charles asserted the Department of Corrections Restitution Department (DOC) had at various times attempted to compound interest in violation of § 25-9-205, MCA, and confuse the final figures as to what was actually owed. On April 28, 2017, the District Court amended the Amended Judgment and ordered that Charles owed a total of \$11,161.98 in remaining restitution and that interest upon the \$11,161.98 balance be waived.

¶5 In June 2017, the District Court received an ex parte email from the DOC seeking clarification of the waiver of interest. Based upon this email, the District Court ordered the State and Charles to file responses, or in the alternative, prepare an order clarifying the issue. The parties consulted and on June 23, 2017, Charles filed a Second Unopposed Motion to Amend Judgment. Charles asserted a correction in the remaining restitution balance based on DOC-verified information. After crediting additional restitution

payments that had been made, the corrected restitution balance was \$103,925.82, with the original balance including interest being \$106,371.61, resulting in a to-pay balance on restitution of \$4,473.18, and again sought waiver of further interest and fees. The parties then stipulated to an order clarifying the issue and providing for the relief Charles sought. The District Court signed the presented order granting the relief Charles sought on June 26, 2017.

¶6 The June 26, 2017 Order Amending Judgment amended judgment to reflect that:

- [T]he Defendant has paid a total of \$103,925.82 of the \$106,371.61 ordered toward restitution;<sup>[1]</sup>
- [T]he Defendant now owes a total of \$4,473.18 in restitution remaining;
- The condition of interest upon this balance shall hereby be waived.
- Adult Probation and Parole shall establish a reasonable payment amount with this new balance in which the Defendant may timely pay off the remaining balance.

¶7 Charles did not appeal or further request amendment of judgment and the June 26, 2017 Order became the final amended judgment. Thereafter, the DOC evidently misinterpreted the District Court's June 26, 2017 amended judgment to include an additional \$51,000 in interest not provided for in the amended judgment to be added to the \$4,473.18 outstanding restitution balance, such that DOC asserted Charles owed a total of \$55,473.18. As such, Charles filed a Motion to Clarify or Amend Judgment on July 18, 2018, seeking the District Court confirm the amended judgment it had issued providing for

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<sup>1</sup> These figures are slightly different than those asserted in Charles's Second Unopposed Motion to Amend Judgment, which we assume is because additional interim payment had been made or recalculation of the original balance with interest. At any rate, the State did not dispute the amount paid or balance due set forth in the Order Amending Judgment.

a total outstanding restitution obligation of \$4,473.18 and no additional interest obligation.<sup>2</sup> Following the State's response,<sup>3</sup> the District Court then issued its January 25, 2019 Order on Motion to Clarify Defendant's Restitution in which it amended its amended judgment of June 26, 2017. Charles appeals.

¶8 An offender may at any time petition the sentencing court to adjust or waive payment of any ordered restitution. Section 46-18-246, MCA. A defendant may appeal a final judgment of conviction and orders after judgment which affect the defendant's substantial rights. Section 46-20-104, MCA. The State has limited appeal rights in a criminal case, not implicated in this matter. Section 46-20-103, MCA.

¶9 Here, Charles petitioned, without opposition by the State, pursuant to § 46-18-246, MCA, to modify her ordered restitution. The District Court granted the relief sought by Charles in her petition—namely, an order stating she had paid a total of \$103,925.82 of the original \$106,371.61 in restitution plus interest, a total balance of \$4,473.18 remained to be paid by her on her ordered restitution, and waiver of all additional interest and fees. On June 26, 2017, the District Court granted that unopposed petition and ordered the relief Charles sought. Charles did not appeal and this amended restitution order became the final amended judgment.

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<sup>2</sup> Although Charles's motion was entitled Motion to Clarify or Amend Judgment, she was, in essence, seeking enforcement of the amended judgment of June 26, 2017.

<sup>3</sup> In its response, the State advised the principal balance owed Tripp Lumber had been paid and related no further position with regard to interest or fees.

¶10 When DOC advised Charles of its interpretation of the District Court’s June 26, 2017 order, Charles filed a motion to clarify her restitution in which she, in essence, sought to enforce the court’s June 26, 2017 order. The District Court then altered its June 26, 2017 order amending restitution to include an additional \$51,000 in interest. Once a final judgment of conviction or order after judgment which affects the substantial rights of the defendant becomes final, a district court does not have authority to amend or alter the order absent an appropriate petition to do so filed by the defendant. “We have often held that, ‘[o]nce a valid sentence has been pronounced, the court imposing that sentence has no jurisdiction to modify it, except as provided by statute.’” *State v. Erickson*, 2018 MT 9, ¶ 15, 390 Mont. 146, 408 P.3d 1288 (quoting *State v. Fertterer*, 260 Mont. 397, 400-01, 860 P.2d 151, 154 (1993)). As the June 26, 2017 Order Amending Judgment was a final order after judgment which affected Charles’s substantial rights, the District Court did not have the authority to amend it. Charles did not seek to adjust the June 26, 2017 order in any way—certainly not in a way to incur an extra obligation of over \$51,000—merely to have the District Court affirm its prior order. The District Court only has jurisdiction to modify a restitution order upon motion to adjust or waive by an offender, which is not the case here. It is therefore appropriate to reverse and remand this matter to the District Court to vacate its January 25, 2019 order and enforce its June 26, 2017 order such that as of that date Charles had a total outstanding balance of \$4,473.18 remaining to be paid in restitution and interest with no further interest or fees due.

¶11 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.

¶12 Reversed and remanded.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ DIRK M. SANDEFUR