

DA 21-0643

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 164N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JENNIFER RENEE SKAW,

Defendant and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DC 20-108
Honorable Jennifer B. Lint, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Jeff N. Wilson, Assistant Appellate
Defender, Missoula, Montana

For Appellee:


Austin Knudsen, Montana Attorney General, Katie F. Schulz, Assistant
Attorney General, Helena, Montana

William E. Fulbright, Ravalli County Attorney, Hamilton, Montana

Submitted on Briefs: May 31, 2023

Decided: August 29, 2023

Filed:


Clerk

Justice Laurie McKinnon 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 Jennifer Renee Skaw (Skaw) appeals her sentence imposed upon revocation in the Twenty First Judicial District Court, Ravalli County. Although the judgment and sentences imposed pertain to two cases (Cause Nos. DC-20-108 and DC-20-171), Skaw appeals only the sentence imposed in Cause No. DC-20-108.

¶3 In August 2020, Skaw was living in a room above her father's garage and relied on her father for transportation and housing. She took her father's vehicle without asking and, when he confronted her, assaulted him. Skaw is a habitual traffic offender and not allowed to drive. During the investigation of the theft and assault, police believed Skaw had been using dangerous drugs and obtained a search warrant for her room above her father's garage. They seized drug paraphernalia, which was positive for methamphetamine. The following day, after speaking with her father who reported the presence of new items in the garage that were not present during the first search, police obtained a second search warrant and subsequently found scales; packaging supplies; five small containers of heroin; a grinder; and marijuana. They also seized a handwritten ledger of drug activity. Skaw was charged in Cause No. DC-20-108 with one count of felony distribution of dangerous

drugs, two counts of felony possession of dangerous drugs, misdemeanor possession of drug paraphernalia, and misdemeanor partner/family member assault.

¶4 Skaw was released on a \$10,000 bail in October 2020. She was required to report to Pre-Trial Supervision (PTS), comply with the conditions of PTS, and wear a drug patch. Skaw failed to do anything, and the District Court issued an arrest warrant on October 22, 2020. Skaw was apprehended on November 7, 2020 and had in her possession methamphetamine and drug paraphernalia. Accordingly, in Cause No. DC-20-171, Skaw was charged with possession of dangerous drugs and drug paraphernalia.

¶5 On November 30, 2020, the parties reached a global plea agreement under § 46-12-211(1)(c), MCA. Skaw agreed to plead guilty to one felony count of possessing heroin in Cause No. DC-20-108, in return for dismissal of the distribution and other charges. In Cause No. DC-20-171, Skaw agreed to plead guilty to felony possession of methamphetamine and misdemeanor possession of drug paraphernalia. The parties agreed to jointly recommend a three-year deferred imposition of sentence for each felony and six months suspended for the misdemeanor. Skaw pled guilty on December 3, 2020, and sentencing was set for January 28, 2021. Skaw was released on her own recognizance and ordered to comply with PTS.

¶6 On December 4, 2020, Skaw enrolled in PTS but did not comply with any conditions and was considered to have absconded. Skaw failed to meet with her probation officer (PO) and did not complete the presentence investigation report (PSI). On December

10, 2020, the District Court issued warrants for Skaw's arrest. Skaw was located eleven days later and detained pending sentencing.

¶7 At sentencing, Skaw admitted to her addiction and expressed that she wanted drug treatment to be part of her sentence. The court agreed to follow the plea agreement and deferred imposition of sentence on the two felonies and imposed a six month suspended sentence for the misdemeanor. Skaw was ordered to report to her PO upon her release.

¶8 Skaw was released but never reported to her PO and gave her PO a false phone number. Inpatient treatment had been arranged at Rimrock, and Skaw failed to report for that as well. Numerous attempts were made to locate Skaw but she remained absent and did not report. On March 12, 2021, the State filed a petition to revoke Skaw's probation.

¶9 Skaw absconded for over six months and was not arrested until September 2021. She admitted to the allegations in the petition and her sentences were revoked on October 14, 2021. Skaw understood that she would not receive a completely suspended sentence and that she would be required to complete drug treatment. For each felony, the State recommended concurrent five-year terms of imprisonment and a suspended six-month term for the misdemeanor. Skaw asked the court to impose two concurrent five-year sentences but requested two of the years be suspended. The parties jointly agreed that Skaw was entitled to 110 days of credit for time served.

¶10 The District Court imposed a five-year commitment to the Department of Corrections (DOC) and a consecutive five-year suspended sentence. The court provided it had "zero confidence that five years is going to be enough, so that's why I'm going to run

the two consecutive and not concurrent.” The court noted that it was “not at all shocked” that Skaw was facing revocation proceedings based on the “numerous bail revocations [and] consistent failure to even be remotely successful[ly] supervised in the community.”

In its written judgement, the court explained:

The reasons for the sentence imposed is it is consistent with Defendant’s behavior since receiving a deferred sentence from this [c]ourt. While the matter was pending originally the Defendant performed abysmally on release. Similarly, once sentenced, she was immediately noncompliant. The Defendant needs time in the custody of the Department of Corrections to address her chemical dependency issues as well as criminal thinking patterns. Additionally, the Defendant needs a probationary tail to assure that she does not return to using and dealing heroin.

¶11 This Court will review sentences that are not eligible for sentence review for both illegality and abuse of discretion. *State v. Thibeault*, 2021 MT 162, ¶ 7, 404 Mont. 476, 490 P.3d 105. Pursuant to § 46-18-903, MCA, a person sentenced to incarceration for one year or more may apply to the Sentence Review Division (SRD) for review of her sentence. Skaw has appealed only her suspended sentence imposed in Cause No. DC-20-108. Because her suspended sentence would not be eligible for consideration by SRD, we may review it for legality and abuse of discretion. *Thibeault*, ¶ 7. Skaw does not argue on appeal that her sentence was illegal; rather, Skaw argues that the District Court abused its discretion when it imposed a consecutive five year suspended sentence. “A district court abuses its discretion if it acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason, resulting in a substantial injustice.” *State v. Doubek*, 2021 MT 76, ¶ 9, 403 Mont. 514, 483 P.3d 1095. This Court reviews a district court’s award of

credit for time served de novo for legality. *State v. Tippetts*, 2022 MT 81, ¶ 10, 408 Mont. 249, 509 P.3d 1.

¶12 Skaw contends the District Court abused its discretion by running Skaw’s suspended sentence consecutively because Skaw can be successfully treated and her sobriety adequately monitored in much less time. Skaw explains that in 2017, Montana codified many sentencing reforms intended to maximize public safety and focus resources on high-risk offenders. Moreover, Skaw points out that in 2021 the Legislature enacted additional reforms, one of which shortened the maximum length of suspended felony sentences. See § 46-18-201(2), MCA. Skaw explains that her consecutive sentence will not increase public safety nor reduce the likelihood she reoffends and that five years is sufficient to rehabilitate Skaw through DOC programming. The State maintains that the District Court did not abuse its discretion because Skaw’s escalation of criminal behavior in 2020 demonstrated that the court was correct in concluding five years would be insufficient to monitor Skaw’s dedication to maintaining sobriety.

¶13 Section 46-18-101, MCA, sets forth Montana’s correctional and sentencing policy. To achieve these policies, Montana courts are granted “judicial discretion to consider aggravating and mitigating circumstances.” Section 46-18-101(3)(d), MCA. Moreover, “[i]n imposing sentence, the sentencing court may consider any relevant evidence relating to the nature and circumstances of the crime, the character of the defendant, the defendant’s background history, mental and physical condition, and any evidence the court considers to have probative force.” *Driver v. Sentence Rev. Div. in the Sup. Ct. of Mont.*, 2010 MT

43, ¶ 17, 355 Mont. 273, 227 P.3d 1018 (quoting *State v. Collier*, 277 Mont. 46, 63, 919 P.2d 376, 387 (1996)). We have held that sentencing courts are consistently granted broad discretion to determine the appropriate punishment. *State v. Alden*, 282 Mont. 45, 51, 934 P.2d 210, 214 (1997). Further, we have consistently recognized that a district court is in the best position to consider the evidence before it. *State v. Morris*, 2010 MT 259, ¶ 20, 358 Mont. 307, 245 P.3d 512.

¶14 Here, the District Court provided its reasons for imposing the suspended sentence consecutively. See § 46-18-102(3)(b), MCA (a sentencing court must clearly state the reasons for the sentence imposed.) It provided that while the original felony matter was still pending, Skaw performed “abysmally” upon release and that, once sentenced, “[Skaw] was immediately noncompliant.” The court noted that Skaw needed time in DOC for chemical dependency treatment and that she needed probation to follow the DOC commitment to ensure she does not return to using heroin. Finally, the court’s findings were supported by substantial credible evidence: Skaw had been addicted by her own admission to heroin and methamphetamine for two years; Skaw was unemployed and dependent on her father who was the victim of the dismissed partner/family member assault charge; Skaw was unable to care for her two children who now lived with their paternal aunt; Skaw absconded from PTS twice; and Skaw never reported and immediately absconded from felony probation.

¶15 We conclude the District Court did not abuse its discretion when it ran Skaw's suspended sentence consecutively to the five year DOC commitment. The court stated its reasons and there was substantial credible evidence supporting its determination.

¶16 Finally, Skaw maintains she was not given the correct amount of credit for time served. Although Skaw did not object to the amount of credit she received, she is not precluded from raising that issue on appeal. *See State v. McCaslin*, 2011 MT 221, ¶ 8, 362 Mont. 47, 260 P.3d 403 (stating we will review a plausible allegation that a sentence is illegal on appeal when the appellant did not object below). The District Court awarded Skaw 110 days of credit. The State agrees with Skaw that she is entitled to 166 days of credit as follows: 53 days (8/9/20-10/1/20); 26 days (11/7/20-12/3/20); 66 days (12/21/20-2/25/21); and 21 days (9/23/21-10/14/21). Accordingly, this matter is reversed in part and remanded for the limited purpose of correcting the amount of credit for time served.

¶17 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.

¶18 Affirmed in part and reversed in part.

/S/ LAURIE McKINNON

We Concur:

/S/ MIKE McGRATH

/S/ INGRID GUSTAFSON

/S/ BETH BAKER

/S/ JIM RICE