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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 22-0340

DA 22-0340

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 62N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MATTHEW SEVERSON,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DC-21-116C
Honorable John C. Brown, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

James M. Siegman, Attorney at Law, Jackson, Mississippi

For Appellee:

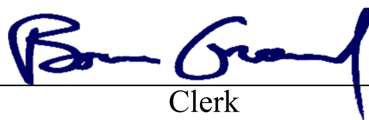
Austin Knudsen, Montana Attorney General, Michael P. Dougherty, Assistant Attorney General, Helena, Montana

Audrey Cromwell, Gallatin County Attorney, Bozeman, Montana

Submitted on Briefs: February 28, 2024

Decided: March 19, 2024

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 Matthew Vincent Severson (Severson) appeals from the May 3, 2022 Sentencing Order entered by the Eighteenth Judicial District Court, Gallatin County, sentencing him for sexual intercourse without consent (SIWOC) to a 100-year commitment to the Montana State Prison, with 75 years suspended, along with a preclusion for parole eligibility for a period of 25 years pursuant to § 45-5-503(4)(a)(i), MCA.[1] We affirm.

¶3 Severson was charged with two counts of SIWOC and one count of sexual abuse of children alleged to have been committed on October 9, 2020, to October 12, 2020. At the time of the offenses, the victim was 12 years of age or younger and Severson was well older than 18 years old. Pursuant to a plea agreement, Severson pled guilty to Count I SIWOC and Count III sexual abuse of children at a change of plea hearing on February 23, 2022. Upon the court accepting his guilty pleas to Counts I and III, at the State's request, the District Court dismissed Count II SIWOC. The plea agreement further provided that with regard to the SIWOC, at sentencing, the State would recommend a 100-year prison

[1] Unless otherwise noted, all statutes refer to the 2019 version of the Montana Code Annotated, under which Severson was charged and sentenced.

term with 75 years suspended and a parole restriction of 25 years pursuant to § 45-5-503(4)(a)(i), MCA,[2] and with regard to the sexual abuse of children, a 10-year, concurrent prison term with none suspended. Under the agreement, Severson was free to make his own sentencing recommendation.

¶4 Prior to sentencing, Severson filed a sentencing memorandum in which he advised the District Court he was seeking, pursuant to § 46-18-222(2), MCA,[3] an exception to the mandatory minimum sentence provided in § 45-5-503(4)(a)(i), MCA, based on significant impairment of his mental capacity. In that memorandum, Severson advised that he had a successful and distinguished military career as a mechanic serving his country in the U.S. Army, the National Guard, and Army Reserves for 28 years. He was honorably discharged in February 2021. He served in active-duty combat in Iraq from 2003-04 during which time he sustained injury—a traumatic brain injury and post-traumatic stress disorder (PTSD)—from friendly fire. As a result, Severson has a 70% disability rating from the Veteran's Administration. Severson argued that, pursuant to both the Psychosexual Evaluation performed by Michael Sullivan and the Psychological Evaluation performed by

[2] Pursuant to § 45-5-503(4)(a)(i), MCA, "[i]f the victim is 12 years of age or younger and the offender in the course of committing a [SIWOC] was 18 years of age or older at the time of the offense, the offender" shall be imprisoned for 100 years, the first 25 years of which may not be suspended or deferred.

[3] Section 46-18-222(2), MCA, provides for an exception to the mandatory minimum sentence prescribed in § 45-5-503(4)(a)(i), MCA, if, at the time of the commission of the offense, the offender's mental capacity "was significantly impaired, although not so impaired as to constitute a defense to the prosecution." The purpose of § 46-18-222, MCA, is to permit a sentencing court discretion to vary downward from a mandatory sentence when the exceptions apply to the facts. *State v. Nichols*, 222 Mont. 71, 82, 720 P.2d 1157, 1164 (1986).

Dr. Scott Klajic, he suffered from PTSD and that Dr. Klajic opined that at the time of the commission of the offense he was significantly impaired but not so impaired as to constitute a defense to the prosecution. Citing Brockton D. Hunter & Ryan Christian Else, *Veterans Advocacy: Legal Strategies For Defending the Combat Veteran in Criminal Court*, 43 Mitchell Hamline L. Rev. 471, 480, Severson asserted that PTSD is commonly associated with poor decision making and while the disorder is not used to argue a defendant's conduct was a result of the disorder, it should be considered as one of multiple circumstances to show that a defendant is less culpable than the average person convicted of an offense and if treated, there are lower recidivism and public safety risks. Severson sought hearing on the exception issue and asserted that Dr. Klajic's report together with his testimony, would satisfy the § 46-18-222(2), MCA, statutory exception to imposition of the mandatory minimum sentence.

¶5 At the evidentiary hearing held May 3, 2022, Severson argued for and presented evidence in support of his argument that he was significantly impaired during the commission of the offense. Dr. Klajic testified Severson suffered from PTSD since sustaining his friendly fire injury in Iraq in 2003. He considered Severson's PTSD significant as it was making him "function a little bit less like a perfectly functioning person." He also described Severson's PTSD to have a dissociative feature where he felt deeply uncomfortable and guilty during the commission of the offenses. Dr. Klajic admitted, though, that there was not a stimuli present during the commission of the offenses related to his PTSD which would make Severson molest a child—there was no rational connection between the offenses and Severson's combat duty. He further could not

conclude that Severson's functioning at the time of the commission of the offenses was any different than at any other time over the preceding 17 years when he was able to maintain law abiding behaviors. He agreed Severson's PTSD did not cause him to engage in the offenses. At the conclusion of the hearing, the District Court accepted Dr. Klajic's testimony as credible, noting Severson had PTSD, but determined its manifestation did not provide any "nexus between the significant impairment and the offense" it believed necessary to meet the statutory criteria to support exception to the mandatory minimum—essentially determining that at the time of the commission of the offenses, Severson was not reacting to any kind of triggering PTSD stimuli and he was not reacting to a PTSD event. With regard to the SIWOC, the District Court imposed a 100-year sentence with the 25-year parole restriction as required by § 45-5-503(4)(a)(i), MCA.[4] In imposing the parole restriction, the court noted the statutorily required 25-year parole restriction, which had fluctuated over time based on the winds of the legislature, reflected the severity of the crime as currently determined by the legislature, such that the court was not required to

[4] With regard to the sexual abuse of children, the court followed the State's recommendation and sentenced Severson to 10 years, with no time suspended, concurrent to the SIWOC. As pointed out by Severson, the court did not impose the mandatory 25-year parole ineligibility required by § 45-5-625(4)(a)(i), MCA—applicable to the sexual abuse of children —and did not explain its departure from the mandatory 25-year parole ineligibility. The State acknowledges that the imposition of a sentence below the mandatory minimum and the District Court's determination no exception applied under § 46-18-222, MCA, could have been error, but asserts it was not an illegal sentence and Severson was not prejudiced by it. We agree. Further, Severson did not object to the imposed 10-year sentence for sexual abuse of children, does not appeal that sentence, and it is not before us on appeal.

make additional findings to support the parole restriction.[5] Severson made no objection nor expressed any contrary thought.

¶6 On appeal, Severson makes the same arguments—albeit less articulately—that he made in his Sentencing Memorandum and now also asserts the sentence imposed for the SIWOC offense violated § 46-18-101(3)(a), MCA, as given the fluctuation in the mandatory sentencing requirements for SIWOC, the sentence was not consistent and understandable, arguing the legislative intent behind the 25-year mandatory parole ineligibility is "uncertain."[6]

¶7 In *State v. Hamilton*, 2018 MT 253, ¶¶ 14-15, 393 Mont. 102, 428 P.3d 849, we set forth the appropriate standards of review for this case:

> "We review criminal sentences that include at least one year of actual incarceration to determine whether they are legal." *State v. Garrymore*, 2006 MT 245, ¶ 9, 334 Mont. 1, 145 P.3d 946. A sentence is legal when it is within the statutory parameters. Therefore, the legality of a sentence is a question of law which we review de novo. *Garrymore*, ¶ 9. We review the district court's findings of fact on which its sentence is based to determine whether they are clearly erroneous. *State v. Shults*, 2006 MT 100, ¶ 34, 332 Mont. 130, 136 P.3d 507.
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> In Montana, exceptions to mandatory minimum sentences—much like sentencing alternatives—are strictly a matter of statute. *Compare* § 46-18-222, MCA, *with* § 46-18-225, MCA, *see Shults*, ¶ 34. Our review of

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[5] Effective in 2019, the Legislature increased the mandatory parole ineligibility period set forth in § 45-5-503(4)(a)(i), MCA, from 10 years to 25 years.

[6] Severson did not raise issues at the district court level as to legislative history and fluctuation of the statutory period of parole ineligibility over time demonstrating uncertainty on the part of legislators regarding the protection afforded the public by the statutory period of parole eligibility, nor did he object before the District Court that the imposed SIWOC sentence was inconsistent with Montana's sentencing policy. Severson waived these arguments when he failed to present them below and we decline to review these claims for the first time on appeal. *See State v. Hamilton*, 2018 MT 253, ¶ 43, 393 Mont. 102, 428 P.3d 849.

> mandatory minimum sentence exceptions requires us to analyze whether the district court correctly applied the statute. *See Shults*, ¶ 34. Sections 46-18-222 and -223, MCA, require a district court judge to determine whether to apply a mandatory minimum sentence exception based on "a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on." Section 46-18-223(3), MCA. Thus, a district court's application of the statute requires it to make findings of fact, which we review to determine whether they are clearly erroneous. *Shults*, ¶ 34. Findings of fact are clearly erroneous "if they are not supported by substantial evidence, the court has misapprehended the effect of the evidence, or our review of the record convinces us that a mistake has been made." *State v. Warclub*, 2005 MT 149, ¶ 23, 327 Mont. 352, 114 P.3d 254 (citing *State v. Eixenberger*, 2004 MT 127, ¶ 13, 321 Mont. 298, 90 P.3d 453).

¶8 We conclude Severson's SIWOC sentence was not illegal.[7] "A sentence is not illegal when it is within the parameters provided by statute." *Garrymore*, ¶ 9. Severson does not dispute the SIWOC sentence imposed was within the statutory parameters of § 45-5-503(4)(a)(i), MCA. Severson also does not argue the District Court's findings of fact—supporting its determination that the criteria for waiver of the mandatory parole ineligibility period under § 46-18-222(2), MCA, were not satisfied—were clearly erroneous, but instead contends the District Court "imposed the parole restriction without explaining why it should be a part of the sentence." We are not persuaded by this argument. Severson agrees his PTSD did not cause him to engage in the offenses. Further, other than

[7] In his briefing, Severson advocates an inaccurate standard of review conflating review for legality of a sentence with abuse of discretion in reviewing the reasonableness of sentence conditions. Severson asserts the District Court abused its discretion when it imposed the 25-year parole restriction but did not explain why it was part of the sentence, asserting the restriction was not reasonable. Severson did not raise a reasonableness objection to the parole restriction and the District Court imposed the restriction pursuant to the mandates of § 45-5-503(4)(a)(i), MCA, not as part of its discretionary sentencing authority. Thus, we review the restriction for illegality, not abuse of discretion.

asserting that PTSD is commonly associated with poor decision making and should be considered as one of multiple circumstances to show that a defendant is less culpable than the average person convicted of an offense and, if treated, there are lower recidivism and public safety risks, he did not present any evidence it caused his poor decision making at the time of the offense or that any of the District Court's findings were clearly erroneous. Here, the District Court accepted Severson suffered from PTSD but determined the evidence did not support the existence of any nexus between the PTSD and the SIWOC offense. From our review of the record, the District Court's findings were not erroneous. The court noted the extremely disturbing nature of the offense; the level of deception, premeditation, and planning Severson had to undertake to commit the offense; his admission that he had thought about assaulting the victim in advance of him traveling to Montana and doing such; and considered this in the context of the report and testimony of Dr. Klajic that at the time of the commission of the offenses Severson was not reacting to any kind of triggering PTSD stimuli nor reacting to a PTSD event. Severson's level of function at the time of the commission of the offenses was consistent with his level of functioning over the preceding 17 years, during which time he demonstrated the ability to maintain law abiding behaviors. Although an offender may be eligible for an exception to a mandatory minimum sentence, that does not mean he is entitled to it. *State v. Novak*, 2008 MT 157, ¶ 8, 343 Mont. 292, 183 P.3d 887. Thus, while § 46-18-222(2), MCA, does not expressly require a nexus between an offender's mental impairment and the offense such that Severson may have been eligible for an exception to the mandatory minimum, given the nature of the offense and the planning and premeditation involved to commit it,

combined with the lack of showing of any nexus between his PTSD and its manifestations to the offenses and Severson's ability to conduct himself in a law abiding manner while being under the same significant impairment from his PTSD and its manifestations over the preceding 17 years, Severson was not entitled to the exception and the court's findings in that regard were not clearly erroneous.

¶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.

Sigkg

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ JAMES JEREMIAH SHEA