IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 13-0584

STATE OF MONTANA,

Plaintiff and Appellant,

v.

STACEY DEAN RAMBOLD,

Defendant and Appellee.

BRIEF OF APPELLANT

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, The Honorable G. Todd Baugh, Presiding

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STATEMENT OF THE ISSUE

Did the district court impose a legal sentence when it sentenced the Appellee, who pled guilty to Sexual Intercourse Without Consent, in violation of Mont. Code Ann. § 45-5-503(3)(a), and faced the mandatory minimum prison sentence of four years and the maximum prison sentence of 100 years, to 15 years in prison with all but 31 days suspended?

STATEMENT OF THE CASE AND FACTS[1]

On April 24, 2008, A.H. reported to Officer Krivitz of the Billings Police Department (BPD) that her 15-year-old daughter, C.M., had confided in a church group leader that a teacher had sexually assaulted her. C.M. turned 15 years old in February 2008 and attended Billings Senior High School. (D.C. Doc. 1 at 2.) Detective Paharik of the BPD began an investigation into A.H.'s report by initially interviewing C.M.'s youth group counselor, Serene Crees (Crees). (*Id.*)

Crees works as a youth intern at Hope Center Foursquare Church in Billings, Montana, and acted as a mentor to C.M. Around April 22, 2008, Crees invited C.M. to go for a walk. The two walked to Baskin Robbins for ice cream. While

[1] Since the Appellee, Stacy Rambold pled guilty to sexual intercourse without consent, the State has taken the facts leading to the charges of sexual intercourse without consent from the Affidavit in Support of the State's Motion for Leave to File an Information.

they were eating their ice cream, C.M. confided in Crees that she had an "affair" with her teacher. C.M. did not want Crees to share this information with anyone else. Crees stopped C.M. and explained that she was required to report the information. C.M. elaborated that the teacher had kissed her and performed oral sex on her but did not disclose the teacher's name. Crees reported C.M.'s disclosure to two other church youth leaders, and on April 23, 2008, Crees and Dana Barnes met with C.M. and A.H., C.M.'s mother. C.M. disclosed to them that the teacher who had kissed her and performed oral sex on her was Stacey Rambold (Rambold), the Defendant and Appellee. (D.C. Doc. 1 at 2.)

Detective Paharik took taped statements from C.M. on April 29, 2008, and May 16, 2008. C.M. told Detective Paharik that she was a ninth grader at Billings Senior High, and Rambold was her teacher for a class called Tech Essentials during fall semester starting in August 2007. C.M. was 14 years old at the time. C.M. explained that about two or three weeks into fall semester, her relationship with Rambold changed. When C.M. left the classroom, she would make witty comments to Rambold, and they would talk. Rambold then began giving her rides home from school and shared information about his personal life with C.M. (D.C. Doc. 1, at 2-3.) The relationship became intimate following an event called Saturday Live, a local fundraiser for area schools that took place at Pioneer Park. (*Id.*)

Rambold was in charge of Saturday Live, and C.M. volunteered at the event. The two walked around the park and talked. Rambold talked about his divorce from his first wife and his two children in Denver, Colorado. C.M. met Rambold's current wife and two stepchildren at Saturday Live. (D.C. Doc. 1, at 2.) C.M. reported that it rained during Saturday Live and she was soaking wet. Since Rambold was dry, she hugged him. Rambold told C.M. that her hug turned him on. Rambold gave C.M. a ride home in his white Raider truck. Rambold had recently wrecked the truck and was looking for the same type of truck in silver. (*Id.* at 3.)

Detective Paharik determined that Saturday Live occurred on September 29, 2007, and confirmed through the National Weather Service that it rained that day. (D.C. Doc. 1, at 5.) Detective Paharik further confirmed that Rambold previously owned a white Mitsubishi Raider pickup. (*Id.*)

On another occasion when Rambold had given C.M. a ride, they stopped by the country club so Rambold could purchase a golf bag as a gift for his wife. (D.C. Doc. 1, at 3.) Rambold had to order the bag because he wanted a bag that was orange and black. (*Id.* at 3.) Detective Paharik later confirmed through the golf pro at the Yellowstone Country Club that Rambold ordered and purchased an orange and black golf bag for his wife. (*Id.* at 5.) Rambold and C.M. also went to a furniture store together where Rambold picked out a piece of furniture.

Afterwards, they parked in a grocery store parking lot and discussed student/teacher relationships. Rambold kissed C.M. for the first time in the parking lot. (*Id.* at 3.)

Rambold maintained that C.M. initiated sexual contact with him by way of a kiss. After she did so, Rambold claimed he was terrified. (Eval. attached to D.C. Doc. 54, at 12.)

After Rambold kissed C.M., they began talking more in person, on the telephone, and by computer. They were sexually intimate on numerous occasions. On one occasion, they made out in the back seat of Rambold's car. Rambold took off all of C.M.'s clothes, except her bra, and performed oral sex on her. On another occasion, during fall semester, Rambold got C.M. out of her fourth period class with Mr. Taft and took her to his house. Rambold and C.M. made out in his bedroom and eventually took off all of their clothes. Rambold had some type of lubricant. Rambold gave C.M. a massage and again performed oral sex on her. Rambold gave C.M. a ride back to school in time for her sixth period class. (D.C. Doc. 1, at 3.)

Rambold admitted that despite being terrified by C.M. kissing him, he did get her out of class one day and took her to his house where he needed to pick up his laptop. Rambold indicated his intention in taking C.M. to his house was twofold--he wanted C.M. to see what a nice house she could have if she worked

hard in school, and he wanted to break things off with C.M. Rambold admitted that instead, he engaged C.M. in oral sex. (Eval. attached to D.C. Doc. 54, at 12.)

Detective Paharik verified that student teacher James Taft (Taft) taught C.M.'s fourth period math class from August 30, 2007, through November 30, 2007. Twice in October 2007, Rambold came to class and requested to have C.M. leave class and go with him. Rambold told Taft that C.M. was behind in some work in his class. (D.C. Doc. 1, at 4.)

C.M. described another instance where she and Rambold made out in his office. Rambold put his hands down her pants and penetrated her vagina with his finger. (D.C. Doc. 1, at 4.) Detective Paharik interviewed a student from Rambold's fourth period, second semester, Tech Essentials class. The student reported that C.M. was not in the class but the student often observed C.M. and Rambold enter Rambold's office together and close the door. On one occasion the student attempted to open the door, and it was locked. Rambold told the student to go away. (*Id.* at 5.)

According to C.M., her intimate relationship with Rambold had slowed down, but was still ongoing up to the time she confided in Crees. In fact, C.M. had planned to go to Rambold's house over the weekend while his wife was out of town. (D.C. Doc. 1, at 3.) Detective Paharik learned that Rambold's wife coached

tennis, and on April 25 and 26, 2008, the Senior High Tennis Team was scheduled to play tennis in Great Falls. (*Id.* at 5.)

The night that C.M. confided in Crees, she called Rambold to tip him off. When C.M. told Rambold that people knew about what they had done, he responded, "We didn't do anything." C.M. responded, "Of course we didn't," and it would be in his best interest to deny everything. The next day at school, Rambold called her during class and told her to call him and tell him exactly what she had said so he could be "prepared for this." C.M. and Rambold did not talk again after that phone call. (D.C. Doc. 1, at 3-4.)

C.M. recalled that Rambold gave her an oil diffuser for Christmas, and a charm bracelet for her birthday. C.M. provided a detailed description of the interior of Rambold's house, which Detective Parahik later confirmed as accurate. (D.C. Doc. 1, at 4.) C.M. knew Rambold's email address because they talked via email. Rambold gave C.M. an "A" in his class even though C.M. admitted that she did not deserve it. (*Id.* at 4.) Detective Parahik interviewed a student who was in Rambold's Tech Essentials class with C.M. This student reported that after Rambold would give students the assignment for the day, he would call C.M. into his office, where they would spend the rest of the period together. Rambold clearly favored C.M. The student estimated that, based upon C.M.'s level of work in the class, she probably should have received a "C" or "D" in the class. (*Id.* at 6.)

In addition to teaching at Billing Senior High, Rambold was also the advisor for a student group called Business Professionals of America (BPA). Detective Parahik learned through his investigation that in 2004, the principal confronted Rambold about allegations that he had engaged in inappropriate physical contact with students. The principal informed Rambold that he could no longer volunteer for girls' sports, and he could not meet with BPA students without another adult present. The principal warned Rambold to keep his hands off all of the students and watch his physical proximity to students. He further warned Rambold that any further complaints would result in a formal investigation, the results of which would be placed in his personnel file. (D.C. Doc. 1 at 7.)

Detective Paharik interviewed A.B., a former Senior High student who graduated in 2005. A.B. was a member of the BPA and went on two trips with the BPA where Rambold accompanied the students. On one trip, the students caught Rambold looking into their hotel room while they were changing. During another incident, Rambold was wearing only a towel. Rambold also used to call A.B. out of class for no valid reason. (*Id.* at 7-8.)

As a result of Detective Paharik's investigation, on October 31, 2008, the State filed an Information charging Rambold with three counts of Sexual Intercourse Without Consent, in violation of Mont. Code Ann. § 45-5-503, and gave notice of its intention to seek a penalty enhancement under Mont. Code Ann.

§ 45-5-503(3)(a), based upon the age difference between Rambold and C.M. (D.C. Doc. 2.)

The district court scheduled a jury trial for March 17, 2009. (D.C. Doc. 8.) At Rambold's request, the district court rescheduled the jury trial for September 1, 2009. (D.C. Docs. 17, 19.) At Rambold's request, the district court postponed the jury trial a second time, and rescheduled the trial for December 21, 2009. (D.C. Docs. 21, 23.) On December 7, 2009, the district court granted Rambold's third motion to continue the trial, and reset the jury trial for April 6, 2010. (D.C. Doc. 26.)

On February 6, 2010, C.M. committed suicide. (D.C. Doc. 54 at 8.) The State and Rambold entered a deferred prosecution agreement and filed it with the district court on July 16, 2010. (D.C. Doc. 35, attached as App. 1.) Pursuant to the agreement, the State agreed to defer prosecution of the charges against Rambold for 36 months from the date of the agreement. (App. 1, at 1, ¶ 2.) In exchange for the deferral, Rambold admitted to knowingly subjecting 14-year-old C.M. to sexual intercourse without consent, as alleged in Count II of the Information. Rambold indicated in the agreement that he understood that, in the event the State reinstated the prosecution, his admission would be admissible against him at trial. (App. 1, at 2, ¶ 4.)

Rambold also expressly waived his right to confront the victim, C.M., and agreed that C.M.'s statements could be introduced at a trial. (App. 1 at 2, ¶ 5.) Rambold agreed that, within one week of executing the agreement, he would enter the Sexual Offender Treatment Program at South Central Treatment Associates with Michael Sullivan and comply with specified conditions. (App. 1, at 2, ¶ 7(a)-(g).)

The deferred prosecution agreement specifically provided:

> Defendant understands that failure to comply with any condition(s) of sexual offender treatment, including required payment of treatment fees, or termination from sexual offender treatment constitutes a violation of this agreement and prosecution may be reinstated at the sole discretion of the prosecutor.

(App. 1, at 3, ¶ 7(g).)

Pursuant to the agreement, Rambold agreed to have no contact with minor children unless "contact with his own children is provided for in a parenting plan and such contact is expressly approved by his Sexual Offender Treatment Provider." (App. 1, at 3, ¶ 8.) The State agreed that if Rambold completed the terms of the Deferred Prosecution Agreement, the State would dismiss all of the charges against Rambold. (App. 1, at 5, ¶ 15.)

On November 30, 2012, Michael Sullivan (Sullivan), the Director of South Central Treatment Associates, wrote a letter to Rod Souza, the prosecutor handling Rambold's case. (11/30/12 Letter, attached to D.C. Doc. 54.) In the

letter Sullivan explained that Rambold had been in outpatient sexual offender treatment at South Central Treatment Associates. Although for a period of time Rambold performed acceptably in the treatment program, in the spring of 2012 things changed. (*Id.*) Sullivan explained:

> His attendance at Group became unacceptable. In fact, he began attending about one Group per month, using his job which required out-of-state travel as an excuse. I met with Stacey on 08/20/12 and discussed this situation with him, informing him that his level of participation in Group was unacceptable. I also made some commitments to Stacey that if he buckled down and attended all of his scheduled appointments, worked hard, and completed assigned tasks in an acceptable manner, the probability of him completing treatment by year's end was positive.
>
> Since the above date, additional concerns have been identified in regards to Stacey's compliance with treatment. This has involved a number of treatment-program rule violations which are significant and very troubling. While working on the road, Stacey has engaged in sexual contact with a number of different women. None of this had ever been reported to his Group or his therapist until the past approximate week when he was confronted with these concerns. In addition, Stacey has recently acknowledged numerous instances of unauthorized contact with minors. This has involved minor-age family members at family functions. Stacey has been well aware of the condition in his *Deferred Prosecution Agreement*, as well as the Rules and Policies at this treatment program, which prohibit any contact with minors unless in the presence of an approved chaperone. Stacey has not received, nor has he requested, any approved chaperones at this point. In spite of this, he is now reporting numerous instances of unauthorized contact.
>
> . . . .
>
> In the past several months, it has become evident that Stacey feels different than the other sex offenders in treatment here. This sense of

being different has allowed him to take liberty with both the conditions of his *Deferred Prosecution Agreement* and his rules for treatment. He is rather adept at shifting blame and responsibility for his violations. He is, further, less than fully revealing when confronted about these behaviors.

. . . .

As I believe you are aware, at South Central Treatment Associates, we strive to hold individuals in treatment accountable to their Court-imposed conditions, as well as the Rules and Policies of this treatment program. We are not willing to provide service to individuals who continually violate the above. This generally reflects an individual who is not invested in the treatment process and is simply doing what he needs to do to get by.

This treatment program has made every effort in an attempt to accommodate Stacey with his work which has involved considerable travel. He has been excused from Group to assist in the maintenance of his employment. At this point, he has approached his treatment at South Central Treatment Associates in a manner in which he expects to be provided with special treatment, and has no accountability to the treatment program or his Group. Sexual offending is a behavior which takes from the community. It takes from the victim, the victim's family, and in this case, the offender's profession, along with his own family. We are not in a position to enable Stacey to continue in this manner.

(*Id.*)

On December 31, 2012, the State gave notice of its intent to prosecute Rambold, and moved the district court to set the matter for trial based upon Rambold's termination from his sex offender treatment program. (D.C. Doc. 40.) The district court reset Rambold's trial for April 22, 2013. (D.C. Doc. 41.) On

April 15, 2013, the parties filed an executed Acknowledgement of Waiver of Rights by Plea Agreement. (D.C. Doc. 47, attached as App. 2.)

Pursuant to the plea agreement, Rambold agreed to plead guilty to the charge of Sexual Intercourse Without Consent as alleged in Count II of the Information. In exchange for Rambold's guilty plea, the State agreed to move to dismiss Counts I and III of the Information with prejudice and to recommend that Rambold receive a sentence of 20 years with 10 years suspended. In the event that the district court rejected the plea agreement, the parties agreed that Rambold should be allowed to withdraw his guilty plea. (App. 2.) Rambold acknowledged that:

> The offenses of Sexual Intercourse Without Consent (Felony) have a **maximum possible penalty** provided by law of life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and by a fine of not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(App. 2, at 2, emphasis in original.)

On April 15, 2013, Rambold appeared for a change-of-plea hearing and pled guilty to one count of Sexual Intercourse Without Consent. (4/15/13 Tr. of Change-of-Plea Hr'g, at 4.) Rambold admitted that he penetrated C.M.'s vagina with his finger, and that because of her age, C.M. was incapable of consenting to this act of intercourse. (*Id.* at 6.) Rambold also informed the district court that he could be sentenced up to life in prison. (*Id.*)

Prior to the sentencing hearing, Adult Probation and Parole Officer Michelle Downey (Downey) completed and filed with the district court a presentence investigation report (PSI). (D.C. Doc. 54.) Attached to the PSI is a psychosexual evaluation (Eval.), dated August 10, 2009, that psychologist Michael Scolatti (Scolatti) completed of Rambold. Scolatti concluded that the district court could designate Rambold as a Level I offender. (Eval., attached to D.C. Doc. 54, at 28.)

Scolatti concluded that the district court could designate Rambold as a Level I offender because his offense was situational and resulted from both marital difficulties, fear of abandonment and fragile self-esteem. (Eval., attached to D.C. Doc. 54, at 28, 31.) Thus from a therapeutic and rehabilitative perspective, Scolatti believed that Rambold could be treated in a community setting under the conditions of a suspended sentence. (Eval., attached to D.C. Doc. 54, at 32.)

At the conclusion of the PSI, Downy recommended that the district court sentence Rambold to 20 years in prison with 10 years suspended, thereby allowing Rambold to complete treatment followed by intense monitoring within the community. (D.C. Doc. 54 at 13.)

Prior the sentencing hearing, Rambold filed a sentencing memorandum with the district court, attaching letters in support of him. (D.C. Doc. 51.) Attached to the sentencing memorandum is a letter from treatment provider Fred Lemons

(Lemons), who indicated that Rambold was participating in outpatient treatment with his program in Bozeman, Montana. (8/14/12 Letter from Fred Lemons, attached to D.C. Doc. 51.) Lemons stated that his program will "continue to provide services to Mr. [Rambold] if he is granted a suspended sentence." (*Id.*)[2]

In the sentencing memorandum, Rambold specifically requested the district court to review C.M.'s two recorded interviews.[3] Rambold recommended the district court sentence him to prison for 15 years with all but 30 days suspended. (*Id.* at 4.) Rambold agreed that the court should impose all but three conditions set forth in the PSI during the suspended portion of the sentence and should require Rambold to complete 100 hours of community service. (*Id.*) Rambold acknowledged that pursuant to Mont. Code Ann. § 45-5-503(3)(a), he faced the

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[2] Lemons did not testify at the sentencing hearing.

[3] Inserted in the envelope with the PSI, are two recorded interviews of C.M.--one between C.M. and the investigating detective dated April 28, 2008, and the other between C.M. and defense counsel Jay Lansing, dated July 29, 2009. Although the State maintains that these interviews are not relevant to the imposition of a legal sentence or even an appropriate sentence, both the district court and Scolatti reviewed the interviews, and they are available for the Court to review for itself. By the time of the second interview, charges had been pending against Rambold for almost a year, and the district court had postponed the trial date three times at Rambold's request.

minimum sentence of four years and the maximum sentence of life imprisonment. (*Id.* at 4-5.) Rambold further admitted that none of the six exceptions to the mandatory minimum sentence provided in Mont. Code Ann. § 46-18-222 applied to his case. (*Id.* at 5.) Rambold argued, however, that under Mont. Code Ann. § 46-18-205(1), the district court could suspend all but 30 days of any prison term it imposed. (*Id.* at 5.)

Rambold urged that he was entitled to the most lenient sentence possible because: he had no prior criminal record; the sexual offender evaluator classified him as a Level I offender; he had not reoffended and was treatable in the community; he was not grooming C.M. for sexual activity or preying upon a vulnerable young female, but rather committed a "situational" offense; he had already suffered the serious consequences of losing his teaching career, community standing, and relationships with family and friends; he would face difficult consequences for years to come; he did not take advantage of C.M.'s suicide by forcing the State to proceed to trial; and because of the role that C.M. herself played in the case. (*Id.* at 6-11.)

The State also filed a sentencing memorandum in which it recommended that the district court impose a prison sentence of 20 years with 10 years suspended. (D.C. Doc. 52.) The State supported its recommendation as follows:

> First, the Defendant took advantage of and abused his position of trust. Parents obviously expect and trust that their children will be

safe from sexual offenses perpetrated by teachers. Teachers must be mentors and role models for the children they instruct. . . . In this case, the Defendant committed the ultimate violation of this trust. The Defendant started and maintained a sexual relationship with a 14-year-old student.

Second, the Defendant's conduct was ongoing and cannot be attributed to a slip-up or mistake. The Defendant's relationship with his 14-year-old student went on for months. . . . Every day for a period of months, the Defendant knew he was engaging in a relationship with a child student. Yet the Defendant continued the relationship. . . . Law enforcement intervention ended the relationship, not the Defendant.

Third, the Defendant took advantage of a vulnerable young woman. [C.M.] tragically took her own life on February 6, 2010. The State will not speculate as to the reasons [C.M.] made this decision. However, the suicide unquestionably demonstrates that [C.M.] coped with mental health issues when she was alive. During the substantial amount of time the Defendant spent with [C.M.,] he most likely knew [C.M.] was troubled. Nevertheless, the Defendant still maintained the relationship and exploited [C.M.].

Fourth, the Defendant was warned about inappropriate contact with students prior to the commission of these offenses. Administrators at Senior High warned the Defendant in 2004 to keep his hands off students, watch his proximity to students, and treat all students the same. Ignoring those warnings, in 2007, the Defendant had sexual contact with [C.M.,] a 14-year-old student.

Finally, the Defendant was provided a tremendous opportunity to avoid prosecution after [C.M.'s] death. The Defendant was required to complete the sex offender treatment program at South Central. If he completed the program, the charge would be dismissed. The Defendant was terminated from treatment for missing counseling sessions, engaging in unauthorized sexual relationships with adults, and having unapproved contact with minors. The State acknowledges there is no evidence of another "hands-on" offense with a minor. However, despite the opportunity provided to the Defendant, he failed to follow the program's strict guidelines, even after being warned

> earlier by Mike Sullivan that continued violations would result in termination. In short, the Defendant already had a shot at probation and failed. The Defendant should not be afforded another chance to avoid incarceration and punishment for the crime he committed.

(*Id.* at 3-4.)

The district court conducted a sentencing hearing on August 26, 2013. (8/26/13 Transcript of Sentencing Hearing [Sent. Tr.].) C.M.'s mother read a statement she prepared prior to the district court imposing sentence. (Sent. Tr. at 5-6.) This statement included the following:

> The result of what this man did to my daughter impacts every minute of my life on every level. My youngest daughter still cries for her big sister. The damage to my sons is irreparable. My kids don't have a big sister anymore and they never will.
>
> I believe Stacey Rambold's actions were a major factor in [C.M.'s] decision to take her own life. She felt guilty for ruining his life. [C.M.] has paid for the consequences of his actions. He was on paid leave while she was being blamed and ostracized and ridiculed by her peers while his peers, the teachers looked the other way.
>
> He was as free as a bird while she was getting threatened and treated like trash every day. He was enjoying life while her whole life was falling apart. We know that teenagers' lives revolve around their friends and their social ties. Stacey Rambold took that away from her in a deliberate and horrible way. He knew what he was doing. He knew what was going to happen to her.

(*Id.*)

Rambold called Sullivan, the director of South Central Treatment Associates to testify. (Sent. Tr. at 7-27.) Sullivan explained that he terminated Rambold from

the sexual offender treatment program in November 2012, for the following reasons:

> . . . Beginning in the early part of 2012, spring 2012, Mr. Rambold's attendance had begun to deteriorate. He was attending infrequently. That is--that goes against our rules and policies. I met with him, I believe, August 20th of 2012 to discuss that issue. Indicated that if he had a chance to complete treatment prior to or around the time his deferred prosecution would end, he would need to attend regularly, he would need to follow the rules, work hard, participate, all the things we would expect out of a client in treatment.
>
> In November of 2012, we learned that Mr. Rambold had been having unauthorized contact with minors, meaning that contact with minors was not approved. We require that any contact with minors is approved by us, that we have a written chaperone's statement in place, and that we're fully aware of all interactions that the client has with any minor child. So we became aware that that had been occurring for some time.
>
> And we also became aware that he had been engaging in sexual relations with adult females, which in and of itself wouldn't necessarily be bad or not okay, but he was not informing his treatment team and group about his behavior. Another requirement of ours is that they keep their treatment team and group fully apprised of all sexual involvements and current life situations.

(Sent. Tr. at 12-13.)

Sullivan said that there was no indication that Rambold had engaged in any inappropriate sexual activity with minors. (Sent. Tr. at 13.) Sullivan was aware that after he terminated Rambold from his treatment program, Rambold began outpatient treatment with Lemons, a Montana Sexual Offender Treatment Association (MSOTA) member in Bozeman, Montana. (Sent. Tr. at 14.) Sullivan

was under the impression that Lemons was willing to continue providing treatment to Rambold. (Sent. Tr. at 15.)

Sullivan explained that each of the rules offenders in his program are expected to follow is critically important. (Tr. at 15.) Sullivan provided the following rationale for the program rule requiring attendance for all scheduled sessions with a very limited number of excused absences:

> Well, there's a few reasons for that. Number one, treatment is important. And treatment involves working consistently over an extended period of time. The other part to that is that we're treating an involuntary population. People aren't beating down my door to get into treatment. Everybody that we treat is in some kind of trouble and there's some kind of external compulsion for them to be in treatment. Therefore, we have to have fairly strict requirements in regards to attendance. Otherwise, they're not going to be there and we're not going to be doing our job.

(Sent. Tr. at 17.)

Sullivan further explained that it is important for the treatment provider to know about *any* of the offender's sexual relationships for the following reasons:

> Well, we're dealing with their sexual behavior, in general, and so there also needs to be a focus in regards to healthy appropriate sexual behavior, whether it's with adults or whoever. And beyond that, if you think about sexual abuse, it's a problem that's shrouded in secrecy, dishonesty. And so we don't want to have any secrets. We don't want to have that individual maintaining any secrets outside of treatment, the feeling as if the extent to which there [are] some secrets out there could pose an increased risk.

(Tr. at 17-18.)

Moreover, as Sullivan explained, the rule regarding contact with minors is strictly enforced:

> We would--we define a minor as anyone less than 21 years. The rules for contact with minors [are] that no client can have unsupervised contact with a minor. In order to have contact with a minor, the client has to have an approved chaperone present at all times, both visual and auditory, and there has to be a formally signed chaperone's statement of responsibility that outlines that individual's problem, the child that is going to be supervised, the circumstances around supervision, those sorts of things.

(Tr. at 18.) The rule is important because:

> We cannot provide services to an individual that we feel might compromise community safety. And so along that line, any contact with minors needs to be closely scrutinized and we need to err on the side of caution in regards to protection.

(Sent. Tr. at 18-19.) In Scolatti's evaluation, he too recommended, without exception, that Rambold not have any unsupervised contact with any female children under the age of 18. (Eval. at 32.)

When Sullivan met with Rambold to discuss the need for Rambold to attend all of his individual and group therapy sessions, he grew concerned that Rambold was not invested in the treatment process and was simply doing what he needed to do to get by. (Sent. Tr. at 21.) Sullivan had the impression that Rambold believed that he deserved special treatment, and Rambold had no accountability to the treatment program or his treatment group. (*Id.*) After Sullivan's intervention with

Rambold on August 20, 2012, Rambold's attendance improved but other problems with Rambold surfaced. (Sent. Tr. at 22.)

Sullivan elaborated that his treatment program must be founded on trust and honesty and explained:

> Well, we have 65 men that we provide services to that all present a risk in the community and we have to hold them accountable. That's our--I think that's our agreement unspoken with the social service and criminal justice system, and we take that responsibility very seriously.

(Sent. Tr. at 22.) Sullivan also added that an evaluator's assessment and recommendation regarding a sex offender's risk factor does not account for punishment. (Sent. Tr. at 25.)

The State recommended that the district court sentence Rambold to 20 years in prison with 10 years suspended, and at the conclusion of its sentencing argument stated:

> But really he already had his shot at probation. And certainly, if you had put any type of sex offender on a probationary sentence, which would be unusual to begin with, but if you did and then they come back and they're terminated from treatment, that would be a very, very serious violation. It would most likely result in long-term incarceration.
>
> The Defendant, Stacey Rambold, committed a very serious offense. He had the chance afforded him to get this all behind him as the result of [C.M.'s] death, and he still could not take that seriously and recognize the opportunity given to him. This crime has always deserved punishment. And this isn't just about his risk. The number one sentencing policy under the State of Montana is punishment and accountability. It also talks about retribution for the victim.

> It's the State's position, punishment is more than appropriate, it always has been, but now more than ever after he has squandered the opportunity that was afforded to him.

(Sent. Tr. at 36-37.)

Defense counsel, on the other hand, emphasized to the district court how much Rambold had already been punished for his crime:

> In the months that followed, he lost his job at Billings Senior High School. I helped him--I guess I don't know if I would say I helped him, but we surrendered our teaching certificate. He watched as friendships went by the wayside. He lost relationships with family members. Lost his home. Got divorced. Saw himself on TV and the *Billings Gazette*. News articles were posted on the Internet.

(Sent. Tr. at 38.) Defense counsel further urged the district court to consider the role 14-year-old C.M. played in the case:

> What occurred in this case, Judge, is--it's a very unusual situation. And it's best described by [C.M.] in the interviews that she gave to Detective Paharik and the interview that she did with me. We asked the Court to consider the two recorded interviews of her and the report of Dr. Scolatti in assessing what occurred in order to determine what is a reasonable sentence.

(Sent. Tr. at 42-43.)

Finally, defense counsel asked the district court to overlook Rambold's termination from Sullivan's community based sexual offender treatment program:

> He should have done a better job at being in that program. And it's not that he was arrogant or thought he was better than everybody else. I'll just tell you, in my--in my opinion, I just felt, Judge, that he was struggling with just being able to get up, go to work and figure out why he's going to treatment and why he's living today. And if you don't have a goal or you don't see that light at the end of the tunnel,

> Judge, it's difficult to get up and do what you're expected to do every day.

(Sent. Tr. at 43.) Defense counsel further reminded the court that even without a prison term, Rambold would still be facing the harsh consequences of being supervised in the community for an extended period and being required to register as a sexual offender. (Sent. Tr. at 44.)

Prior to sentencing Rambold, the district court remarked:

> The situation we have here is different than many sexual offense matters that come before this Court. In some respects, the Defendant took advantage of a troubled youth. I've looked at those interviews. And it's easy enough to say the Defendant should have been aware, should not, obviously, have engaged in the conduct that he did. And it was a troubled youth, but a youth that was probably as much in control of the situation as was the Defendant, one that was seemingly, though troubled, older than her chronological age.
>
> There is no good sentence in these kinds of situations. What the State asks for is understandable. What the Defendant asks for is understandable. The events and occurrences since the deferred prosecution agreement back in July of 2010, while they are events and circumstances that warranted his termination from the program with Mr. Sullivan, are not in and of themselves the serious transgressions that would recommend, as appropriate, the sentence being recommended by the State.
>
> I believe that the sentence being recommended by the Defense is the more acceptable one. And it will be the sentence of the Court that the Defendant will be sentenced to 15 years at the Montana State Prison, credit for time served, all but 31 days suspended.

(Sent. Tr. at 46-47.)

On August 29, 2013, the district court filed a Sentencing Addendum in which it explained the rational for the sentence it orally pronounced. The court acknowledged that on its face, the State's recommendation was not "inappropriate" and would be a "fairly typical" sentence. But, the district court elaborated:

> In July, 2010, the State recommended that prosecution of the rape charges should be deferred for 3 years and ultimately dismissed if the Defendant would admit to Count II and enter into the Sexual Offender Treatment Program. The Defendant agreed, and entered the program and began working his way toward all charges being dismissed. In essence, he was on a form of pre-trial probation.
>
> In November, 2012, the Defendant was dropped from the program because (1) he had contact with some nieces and nephews in a family setting with other adults present who were aware of the rape, but without first getting permission from the treatment program and (2) some relationships with an adult woman or women that involved sex, but without sharing this with others in his group counseling sessions.
>
> These were violations of the treatment program, but involved no violence, no inappropriate sexual conduct, and no new criminal activity. Defendant's old treatment provider recommended that the Defendant still be assessed as a low risk offender and treatable in the community. Knowing that the Defendant had enrolled in another sexual offender treatment program, the court is faced with deciding if the Defendant should go to prison for relatively minor infractions.
>
> . . . .
>
> Based on what can be referenced in this Addendum, one can still rationally argue that a prison sentence as opposed to a suspended sentence is more appropriate. However, there is other relevant information that the Court has not released to the public. The Court is given to understand that it cannot be released. Yet, it did, in this case, impact the sentence. Foremost, among the information is the following:

1. The July 18, 2013, Pre-Sentence Report from the Department of Corrections to which is attached the August 10, 2009, Psychological/Psychosexual Evaluation consisting of 32 pages;[4]

2. The April 29, 2008, interview of the victim by a law enforcement detective; and

3. The July 29, 2009, interview of the victim by the Defendant's attorney.

Even without the deferred prosecution of this case, had the Defendant pled guilty or been convicted by a jury three years ago, he would have had a basis from which to argue for a minimum sentence.

(D.C. Doc. 55, attached as App. 3.)

It appears that the district court gave great deference to remarks within the record suggesting that 14-year-old C.M. was an involved and active participant in the offense, and was more in control than Rambold, who was both her teacher and over 30 years her senior. The State disagrees with any suggestion, no matter where it might have originated, that 14-year-old C.M. was in any way culpable for her own sexual victimization.

On September 3, 2013, the district court entered a Notice and Order, in which it notified the parties that it had been the court's intention to impose a

[4] Scolatti completed his evaluation prior to Sullivan terminating Rambold from outpatient treatment. Rambold did not call Scolatti to testify at his sentencing hearing.

15-year prison sentence with all but the mandatory minimum sentence suspended. (D.C. Doc. 56, attached as App. 4.) The district court noted that defense counsel informed the court that, according to Mont. Code Ann. § 46-18-205(1), the mandatory minimum was 30 days. The court further remarked that the "State did not object or otherwise inform the Court on the issue of the applicable mandatory minimum." (*Id.* at 1.) Upon further reflection, the district court concluded that pursuant to Mont. Code Ann. § 46-18-205, the mandatory minimum was two years rather than 30 days. The court further concluded that "imposing a sentence which suspends more than the mandatory minimum would be an illegal sentence." (*Id.*)

On September 6, 2013, the district court filed a written judgment that conformed to the court's oral pronouncement of sentence and sentenced Rambold to 15 years in prison with all but 31 days suspended and credit for one day of time served. (D.C. 66, attached as App. 5.) The State filed a timely Notice of Appeal. (D.C. Doc. 62.)

SUMMARY OF THE ARGUMENT

Although Montana's indeterminate sentencing structure is usually founded upon judicial discretion, the Montana Legislature, on behalf of Montana citizens, has made a policy decision that in certain circumstances, a sentencing court *must* impose a legislatively-determined mandatory minimum sentence. The

circumstance of a 47-year-old teacher having sexual intercourse with his 14-year-old student is precisely such a circumstance warranting a mandatory minimum sentence. While there are exceptions to the mandatory minimum 4-year prison term for Sexual Intercourse Without Consent provided in Mont. Code Ann. § 45-5-503(3)(a), Rambold conceded below that none of those exceptions apply to the facts of his case. Moreover, since none of the exceptions codified at Mont. Code Ann. § 46-18-222 apply to Rambold's case, neither did Mont. Code Ann. § 46-18-205(1) apply to Rambold's case. When the district court used Mont. Code Ann. § 46-18-205(1) to suspend all but 31 days of Rambold's prison sentence, the court imposed an illegal sentence, in which it erroneously attributed culpability to the 14-year-old victim. Since the illegal sentence imposed is akin to illegal sentences imposed in persistent felony offender cases, this Court should employ the same remedy. The Court should vacate the judgment of the district court and remand for resentencing.

ARGUMENT

I. THE STANDARD OF REVIEW

This court exercises *de novo* review of issues of statutory construction to determine whether the district court correctly interpreted and applied the statute. The court reviews a criminal sentence that includes at least one year of

incarceration for legality only, that is, whether the sentence is within statutory parameters. *State v. Sullivant*, 2013 MT 200 ¶ 8, 371 Mont. 91, 305 P.3d 838.

II. WHEN THE DISTRICT COURT DID NOT AT LEAST IMPOSE THE MANDATORY MINIMUM SENTENCE OF FOUR YEARS, IT IMPOSED AN ILLEGAL SENTENCE.

Rambold pled guilty to committing Sexual Intercourse Without Consent pursuant to Mont. Code Ann. § 45-5-503(3)(a)[5], which provided for the following penalty:

> If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender *shall* be punished by life imprisonment or by imprisonment in the state prison *for a term not less than 4 years* or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

Montana Code Annotated § 46-18-219 mandates life sentences for recidivist sexual offenders and is not applicable to Rambold's case. Montana Code Annotated § 46-18-222 provides six exceptions to mandatory minimum sentences. In Rambold's sentencing memorandum, he admitted that none of those exceptions apply to his case. (D.C. Doc. 51 at 5.)

[5] Since the offense occurred between October and December 2007, all references to the statutes involved in the instant case are to the 2007 statutes.

Nonetheless, Rambold urged the district court to sentence him to the most lenient sentence possible and argued that, pursuant to Mont. Code Ann. § 46-18-205(1), the most lenient sentence the district court could impose would include only 30 days of imprisonment that *could not* be deferred or suspended. Thus, Rambold asked for, and the district court imposed a sentence, of 15 years in prison with all but 31 days suspended.

Montana Code Annotated § 46-18-205(1) provides in pertinent part:

> If the victim was less than 16 years of age, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:
>
> (a) 45-5-503, sexual intercourse without consent

The district court mistakenly relied upon Mont. Code Ann. § 46-18-205(1) to suspend all but 30 days of Rambold's prison sentence.

This Court addressed this very issue in *State v. Fauque,* 2000 MT 168, 300 Mont. 307, 4 P.3d 651. The defendant, Fauque, pled guilty to one count of Sexual Intercourse Without Consent and one count of Sexual Assault for acts he committed against his 14-year-old daughter. Since Fauque's victim was less than 16 years old and Fauque was three or more years older than his victim, pursuant to Mont. Code Ann. § 45-5-503(3)(a) (1997), the district court was required to sentence Fauque to prison for a term not less than four years or more than

100 years. The district court sentenced Fauque to 25 years in prison with all but 4 years suspended for the sexual intercourse without consent conviction. *Id.*, ¶ 6.

On appeal, Fauque argued that there was a conflict between the 4-year mandatory minimum sentence set forth in Mont. Code Ann. § 45-5-503(3)(a), and Mont. Code Ann. § 46-18-201(8)[6], which provided that, where the victim of Sexual Intercourse Without Consent was less than 16 years old, the first 30 days of a sentence of imprisonment could not be deferred or suspended, and the exceptions to the mandatory minimum sentence found at Mont. Code Ann. § 46-18-222 did not apply to those first 30 days of imprisonment. Fauque argued on appeal that the "conflict" between the sentencing statutes created an ambiguity that should be resolved in his favor under the "rule of lenity." *Id.*, ¶ 9. This Court concluded, however, that there was no conflict between the two statutes. *Id.*

The Court first concluded that the mandatory minimum four-year sentence set forth in Mont. Code Ann. 45-5-503(3)(a) clearly applied to Fauque because he was 53 when he committed his offense and the victim was 14 years old at the time of the offense. The Court further concluded that the provisions of Mont. Code Ann. § 46-18-201(8) did not apply because the district court had not determined that any of the Mont. Code Ann. § 46-18-222 exceptions to the mandatory minimum applied. *Id.*, ¶ 13. In so doing, the Court stated:

---

[6] This provision is now codified at Mont. Code Ann. § 46-18-205(1).

> [a] plain reading of § 46-18-201(8), MCA (1997), . . . reflects the Legislature's intent that, on a conviction for sexual intercourse without consent involving a victim less than 16 years old the first 30 days of any mandatory minimum sentence under § 45-5-503, MCA (1997), may not be deferred or suspended under any circumstances and, specifically, that the exceptions provided in § 46-18-222, MCA (1997), do not apply to the first 30 days. In other words, even where a § 46-18-222 MCA (1997) exception exists, a district court may not suspend the first 30 days of the term of imprisonment if the victim is less than 16 years old. In a situation like that before us in the present case, § 46-18-201(8), MCA (1997), simply does not come into play because no § 46-18-222, MCA (1997), exception to the 4-year mandatory minimum sentence mandated by § 45-5-503(3)(a), MCA (1997) exists.

Id., ¶ 13.

The Court revisited the issue in *State v. Bailey,* 2004 MT 87, 320 Mont. 501, 87 P.3d 1032, a case in which a jury found the defendant, Bailey, guilty of two counts of Incest. The district court then sentenced Bailey to the Department of Corrections for 10 years, with 6 years suspended for each conviction. *Id.*, ¶ 9. In so doing, the district court determined that pursuant to Mont. Code Ann. § 45-5-507(4), worded similarly to Mont. Code Ann. § 45-5-503(3)(a), it was required to impose the mandatory minimum prison term of 4 years. *Id.*, ¶ 47. On appeal, Bailey argued that Mont. Code Ann. § 46-18-205(1) authorized the suspension of all but the first 30 days of a sentence for incest. *Id.*, ¶ 48.

In rejecting Bailey's claim, this Court explained:

> The situation here is nearly identical to that in *Fauque*. Because both M.C. and A.B. were less than 16 years of age and Bailey was more than three years older at the time of the offenses, the

> § 45-5-507(4), MCA, four-year mandatory minimum sentence clearly is applicable. Furthermore, the District Court determined that none of the exceptions to the mandatory minimum sentence set forth in § 46-18-222, MCA, existed and Bailey has not challenged that determination. Moreover, § 46-18-205(1), MCA, is similar to the statute at issue in *Fauque* in that the language reflects legislative intent that, upon a conviction for incest involving a victim less than 16 years old, the first 30 days of any mandatory minimum sentence may not be deferred or suspended under any circumstances, and specifically, that the exceptions to a mandatory minimum sentence set forth in § 46-18-222, MCA, do not apply to the first 30 days of the sentence. *See Fauque*, ¶ 13. As in *Fauque*, the provisions of § 46-18-205(1), MCA, do not come into play in this case because no § 46-18-222, MCA exceptions to the mandatory minimum sentence for incest exist.

Id., ¶ 52.

The holdings of *Fauque* and *Bailey* clearly apply to Rambold's case. Rambold was 47 years old at the time he committed the Sexual Intercourse Without Consent, and C.M. was 14 years old. Rambold admitted that none of the Mont. Code Ann. § 46-18-222 exceptions to the mandatory minimum sentence applied to his case. (*See* D.C. Doc. 51 at 5.) Thus, Mont. Code Ann. § 46-18-205(1) was not applicable to Rambold, and the district court should have sentenced Rambold to *at least* the mandatory minimum prison sentence of 4 years as set forth in Mont. Code Ann. § 45-5-503(3)(a).

The State, of course, maintains that the sentence of 20 years with 10 years suspended that it recommended below remains a just sentence, which balances *all* of Montana's sentencing policies. *See* Mont. Code Ann. § 46-18-101. When

imposing sentence, the district court seemed to disproportionately focus on Rambold's ability to receive treatment in a community setting, and C.M.'s "role" in the offense. The State maintains that, despite the remarks made in the record about C.M. and her audacity, there is no legitimate hypothetical that allows blame to be placed on a 14-year-old student who has been victimized by her 47-year-old teacher. The State's position is reflected in both the mandatory minimum sentence set forth in Mont. Code Ann. § 45-5-503(3)(a), and in the legislature's decision to exclude a conviction for an offense under Mont. Code Ann. § 45-5-503(3)(a) from the exception to the mandatory minimum found at Mont. Code Ann. § 46-18-222(6). As a minor child, C.M. was legally incapable of consent and, as such, it was legally impermissible for the sentencing court to assign any blame to her or to mitigate Rambold's punishment because of the young victim's purported role in Rambold's offense.

Since the district court did not sentence Rambold in accord with statutory parameters, the court imposed an illegal sentence. *State v. MacDonald*, 2013 MT 105, ¶ 9, 370 Mont. 1, 299 P.3d 839; *State v. Petersen*, 2011 MT 22, ¶ 13, 359 Mont. 200, 247 P.3d 731. In the past, this Court did not employ a single rule "regarding the appropriate remedy for a partially illegal sentence. . . ." *State v. Olivares-Coster*, 2011 MT 196, ¶ 15, 361 Mont. 380, 259 P.3d 760, quoting *State v. Heafner*, 2010 MT 87, ¶ 9, 356 Mont. 128, 231 P.3d 1087. The Court

generally "vacated or remanded with instructions to strike when the illegal portion of a sentence was a condition of a suspended sentence or a sentence enhancement." *Oliveres-Coster*, quoting *State v. Heath,* 2004 MT 58, ¶ 49, 320 Mont. 211, 89 P.3d 947. On the other hand, "remand for re-sentencing was the general practice where an illegal sentencing provision 'affected the entire sentence, or where [the Court was] unable to determine what sentence the district court would have adopted had it correctly followed the law.'" *Oliveres-Coster*, ¶ 15, quoting *Heath*, ¶ 49.

In *Heafner*, this Court concluded that the disparate approaches resulted in unpredictable and inconsistent dispositions. *Heafner*, ¶¶ 9-10. Thus, the Court determined that "a consistent approach should be utilized" and articulated the following standard:

> [W]hen a portion of a sentence is illegal, the better result is to remand to the district court to correct the illegal provision. Remand to give the district court the opportunity to correct the illegal provision should be ordered unless, under the particular circumstances of the case, the illegal portion of the sentence cannot be corrected. If so, the case should be remanded to the district court with instructions to strike the illegal conditions.

Heafner, ¶ 11. Applying the rule from *Heafner*, this Court cannot remand for the correction of the district court's sentence, because the sentence was unlawful under governing statutes. *See, e.g., Petersen*, ¶ 16.

Under the circumstances of this case, this Court should vacate the judgment of the district court and remand for resentencing in accord with the mandatory minimum provision set forth in Mont. Code Ann. § 45-5-503(3)(a), which clearly applies to the facts in this case. This Court has taken a similar approach and remanded for resentencing in cases where a sentencing court has imposed an illegal persistent felony offender sentence. *See, e.g.*, *State v. Johnson*, 2010 MT 288, ¶¶ 17-18, 359 Mont. 15, 245 P.3d 1113.

CONCLUSION

The State respectfully requests that this Court vacate the judgment of the district court and remand for resentencing in accord with the sentencing provisions set forth in Mont. Code Ann. § 45-5-503(3)(a).

Respectfully submitted this 29th day of November, 2013.

TIMOTHY C. FOX
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

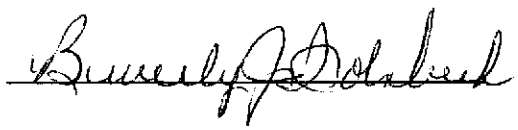
By: _____
TAMMY K PLUBELL
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Brief of Appellee to be mailed to:

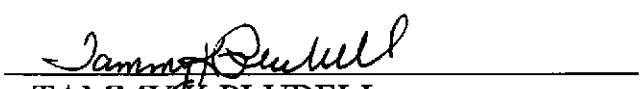
Mr. Jay F. Lansing
Attorney at Law
Moses and Lansing, PC
P.O. Box 2533
Billings, MT 59103-2533

Mr. Rod Souza
Deputy Yellowstone County Attorney
P.O. Box 35025
Billings, MT 59107-5025

DATED 11/29/13 

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 9,044 words, excluding certificate of service and certificate of compliance.


TAMMY K PLUBELL

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 13-0584

STATE OF MONTANA,

Plaintiff and Appellant,

v.

STACEY DEAN RAMBOLD,

Defendant and Appellee.

APPENDIX

APPENDIX 1

Rod Souza (# 08-15325)
DEPUTY YELLOWSTONE COUNTY ATTORNEY
P.O. Box 35025
Room 701, Courthouse
Billings, MT 59107-5025
Telephone 406/256-2870
Attorney for Plaintiff

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

STATE OF MONTANA Plaintiff, vs. STACEY DEAN RAMBOLD, Defendant.	Cause No. DC 08-0628 Judge G. Todd Baugh **DEFERRED PROSECUTION AGREEMENT**

The undersigned Deputy County Attorney of Yellowstone County, Montana, in agreement with the Defendant, enter into and file this Deferred Prosecution Agreement.

Plaintiff believes it is in the interests of justice to enter into a Deferred Prosecution Agreement. Therefore, in consideration of the promises contained herein, it is hereby agreed:

1. Defendant is presently charged with Count I: Sexual Intercourse without Consent (Felony), Count II: Sexual Intercourse without Consent (Felony); and Count III: Sexual Intercourse without Consent (Felony) in DC 08-628.
2. The prosecution of the above described charge shall be deferred for a period of thirty-six (36) months from the date of this agreement.
3. The Yellowstone County Attorney's Office agrees to defer the prosecution of Defendant on the above described charges so long as defendant performs his obligations under this agreement and so long as he does not violate any of the terms of this agreement.

(25)

4. Defendant admits that he knowingly subjected another person, C.M. (age 14, d.o.b. February 1993) as alleged in Count II to sexual intercourse without consent, by penetrating her vagina while performing oral sex on her, during the Fall of 2007, at his residence in Billings, Yellowstone County, Montana. Defendant admits C.M. was incapable of consent due to her age. *See* Mont. Code Ann. § 45-5-501 (1)(a)(ii)(D) (2007). An admission of this unlawful conduct by Defendant will be executed in an affidavit and be retained in the investigative file. In the event that prosecution is reinstituted, Defendant understands that such admission shall be termed a judicial admission and may be admitted against him at trial without foundation or corroboration and is in itself sufficient for conviction of the offense as charged.
5. In the event prosecution is reinstituted, Defendant expressly waives his right to confront the alleged victim, C.M., guaranteed under the Sixth Amendment to the United States Constitution and Article II, Section 24 of the Montana Constitution, and interpreted in *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), and *State v. Mizenko*, 2006 MT 11, 330 Mont. 299, 127 P.3d 458. As a result of this waiver, Defendant understands any and all of C.M.'s statements, including those deemed testimonial, may be introduced in any proceeding, including trial, without objection.
6. During the period of deferment, Defendant agrees to obey the laws of the United States, the State of Montana and of any other jurisdiction in which he may be found. With the exception of minor traffic offenses, Defendant understands that any conviction for a misdemeanor or felony offense constitutes a violation of this agreement and prosecution may be reinstituted.
7. Within one week of execution of this agreement, Defendant shall enter the Sexual Offender Treatment Program at South Central Treatment Associates with Michael Sullivan. The Defendant shall complete all phases of the Sexual Offender Treatment Program over the course of the deferment period.

a. Defendant agrees to comply with all rules and regulations that are established by the appropriate officials at South Central Treatment Center in reference to the Sexual Offender Treatment Program.

b. Defendant agrees to attend each scheduled appointment and to give reasonable notice if it becomes apparent he will not be able to make a scheduled appointment.

c. Defendant agrees to cooperate in good faith with all counselors and administrators of the program.

d. Defendant agrees to refrain from engaging in personally threatening behavior towards any persons who are providing supervision and direction throughout the course of his treatment.

e. Defendant agrees to abide by all conditions of the treatment plan developed by the professional staff at South Central Treatment Center and take all steps necessary to implement the treatment plan.

f. Defendant understands that it is necessary for staff at South Central Treatment Center to discuss his progress in the treatment plan with members of the Yellowstone County Attorney's Office and other professional members of the Sexual Offender Treatment Program. Release of information regarding Defendant's treatment plan and compliance with its conditions is hereby authorized and approved by the Defendant.

g. Defendant understands that failure to comply with any condition(s) of sexual offender treatment, including required payment of treatment fees, or termination from sexual offender treatment constitutes a violation of this agreement and prosecution may be reinstituted at the sole discretion of the prosecutor.

8. Defendant agrees to have no contact with minor children unless contact with his own children is provided for in a parenting plan and such contact is expressly approved by his Sexual Offender Treatment Provider.

9. Defendant will not seek employment or attempt to engage in any activity where he would have contact with minor children.

10. During the period of deferment, Defendant agrees to keep in regular contact with his attorney and to have no contact with the victim's family.

11. Defendant agrees that for violation of the terms of this agreement he may be arrested and prosecuted, and, in that event, the fact of this agreement shall not constitute grounds for asserting that his constitutional right to a speedy trial has been violated since such delay would be due to Defendant's voluntary execution of this agreement, and, to that extent, Defendant hereby waives his right to speedy trial. A waiver of speedy trial will be executed and attached to this agreement.

12. Should Defendant violate the terms of this agreement and prosecution be renewed, Defendant waives his right to extradition proceedings and consents that he be returned to Yellowstone County, Montana, to face any charges.

13. Counsel for Defendant has explained to Defendant the charges against him, his rights in regard to the charges, including the right to competent and effective counsel, the right to have witnesses testify on his behalf, the right to confront and cross-examine any witnesses against him, the right not to be compelled to incriminate himself, the right to require his guilt to be proven beyond a reasonable doubt, and the right to challenge any evidence that has been illegally seized, and the right to appeal a finding of guilt. Further, counsel for Defendant has explained to Defendant his obligations under the Deferred Prosecution Agreement and the consequences of failing to perform his obligations under the agreement. Defendant has acknowledged he understands the charges against him, his rights in regard to the charges, his obligations under the Deferred Prosecution Agreement and the consequences of failing to perform his obligations under the agreement.

14. Defendant understands the Deferred Prosecution Agreement and Speedy Trial

Waiver are public documents to be filed with the Clerk of District Court and disclosure of these materials will not terminate the agreement.

15. If Defendant completes the terms of this Deferred Prosecution Agreement, the plaintiff will dismiss the charges in DC 08-628.

16. During the period of deferment, a modified Release Order will be entered requiring Defendant to comply with all conditions of the Deferred Prosecution Agreement and exonerating any bond previously posted. Defendant understands that if prosecution is reinstituted, the previous conditions of release will be imposed and a bond amount set by the Court.

17. This agreement may only be modified by the mutual written consent of the parties, including the Judge assigned to the case.

RESPECTFULLY SUBMITTED this 15th day of July, 2010.

Rod Souza
Deputy Yellowstone County Attorney

Jay Lansing
Counsel for Defendant

Stacey Dean Rambold, Defendant

APPROVED BY THE COURT:

G. Todd Baugh
District Court Judge

APPENDIX 2

Jay F. Lansing
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P. O. Box 2533
Billings, MT 59103-2533
Telephone: (406) 248-7702
Attorneys for Defendant

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

STATE OF MONTANA,	)	No. DC-08-628
	)	
Plaintiff,	)	The Honorable G. Todd Baugh
	)	
v	)	**Acknowledgment of Waiver of Rights By Plea Agreement**
	)	
STACEY DEAN RAMBOLD,	)	
	)	
Defendant.	)	

I, Stacey Dean Rambold, am prepared to enter a plea of "Guilty" in the above entitled matter. This plea is being voluntarily made and not the result of force or threats or of promises.

I acknowledge that my attorney has explained to me and advised me of the following, and I fully understand that:

1. I am charged by way of an Information with the following offenses:

Count I - - Sexual Intercourse Without Consent (Felony);
Count II - - Sexual Intercourse Without Consent (Felony); and
Count III - - Sexual Intercourse Without Consent (Felony); all in violation of Section 45-5-503, MCA, (2005).

The offenses of Sexual Intercourse Without Consent (Felony) have a **maximum possible penalty** provided by law of life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and by a fine of not more than $50,000, except as provided in 46-18-219 and 46-18-222.

The lesser included offenses to the charge of Sexual Intercourse Without Consent (Felony) are:

(a) Sexual Assault (Felony) which has a maximum possible penalty provided by law of life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000; and

(b) Sexual Assault (Misdemeanor) which has a maximum possible penalty provided by law of imprisonment in the county jail for a term not to exceed 6 months or a fine not to exceed $500, or both.

2. I have the right to plead Not Guilty or to persist in that plea if it has already been made.

3. I have the right to be tried by a Judge or a jury, and at that trial, I have the following rights:

a. The right to the assistance of counsel.
b. The right to have witnesses testify on my behalf.
c. The right to confront and cross-examine witnesses against me.
d. The right not to be compelled to incriminate myself.
e. The right to require my guilt to be proven beyond a reasonable doubt.
f. The right to appeal any finding of guilty.

4. By pleading Guilty I give up the right to a trial by jury or Judge, the

right to have witnesses testify on my behalf, the right to confront and cross-examine witnesses against me, the right not to be compelled to incriminate myself, and the right to appeal any finding of Guilty.

5. This plea of "Guilty" is made pursuant to a plea agreement with the State of Montana in which the parties have agreed as follows:

a. The defendant will enter a plea of "Guilty" to the charge of Sexual Intercourse Without Consent (Felony) as alleged in Count II of the Information.

b. In exchange for the defendant's plea of guilty, the State of Montana will recommend at the sentencing hearing that the defendant be sentenced to the Montana State Prison for a term of 20 years, with 10 of those years suspended.

c. The defendant will be free to make any appropriate sentencing recommendation to the Court.

d. The State of Montana will move to dismiss with prejudice Counts I and III of the Information.

e. The State of Montana and the defendant agree that this plea agreement shall be governed by Section 46-12-211(1)(a) and (1)(b), MCA, in that if the court rejects the plea agreement by either imposing a sentence greater than the sentence recommended by the State of Montana (20 years imprisonment in the

Montana State Prison, with 10 of those years suspended) or failing to dismiss Counts 1 and 3, the Court shall, on the record, inform the parties of this fact and advise the defendant that the Court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

6. I am not suffering any emotional or mental disability from any cause including mental defect or impairment or the taking of drugs, alcohol or prescription medicine and I fully understand what I am doing.

7. The following are the facts which cause me to plead guilty to the offense alleged in Count II:

During the Fall of 2007, I penetrated the vagina of C.M. with my finger. At that time, C.M. was 14 years of age. This occurred at my residence in Billings, Yellowstone County, Montana. I agree that C.M. was incapable of consent due to her age.

8. My lawyer has been fair to me, has represented me properly, and I am satisfied with his services and advice.

9. I acknowledge receiving a copy of this statement.

////

DATED this 14 day of April, 2013.

GTB

Stacey Dean Rambold

I certify that the defendant has read the above and/or I have read the above to the defendant, and I have advised the defendant of the above and explained it to him and I am satisfied that he understands all his rights and that his plea of guilty is being voluntarily made, and that he understands he is waiving such rights by entry of said plea.

DATED this 14th day of April, 2013.

MOSES and LANSING, P.C.
P. O. Box 2533
Billings, MT 59103-2533

By: _____
Jay F. Lansing
Attorney for Defendant

APPROVED AS TO TERMS AND CONTENT:

Rod Souza
Chief Deputy County Attorney for Yellowstone County

APPENDIX 3

CLERK OF THE
DISTRICT COURT
KRISTIE LEE BOELTER

2013 AUG 29 PM 4 25

FILED

BY _____ DEPUTY

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

STACEY DEAN RAMBOLD,

Defendant.

Cause No: DC-08-628
Judge: G. Todd Baugh

SENTENCING ADDENDUM

Rape under any circumstances is a terrible and violent offense. Some involve physical beatings and broken bones; others, as here, involve young victims legally not capable of consenting. All are traumatic and all are crimes.

In sentencing criminal conduct, there is a punishment aspect and a rehabilitation aspect. On its face, the State's recommendation of 20 years prison sentence is not inappropriate and would be a fairly typical sentence.

So, why did this Court impose a 15 years suspended sentence?

In July, 2010, the State recommended that prosecution of the rape charges should be deferred for 3 years and ultimately dismissed if the Defendant would admit to Count II and enter into the Sexual Offender Treatment Program. The Defendant agreed, entered the program and began working his way toward all charges being dismissed. In essence, he was on a form of pre-trial probation.

In November, 2012, the Defendant was dropped from the program because (1) he had contact with some nieces and nephews in a family setting with other adults present who were aware of the rape, but without first getting permission from the treatment program and (2) some relationships with

an adult woman or women that involved sex, but without sharing this with others in his group counseling sessions.

These were violations of the treatment program, but involved no violence, no inappropriate sexual conduct, and no new criminal activity. Defendant's old treatment provider recommended that the Defendant still be assessed as a low risk offender and treatable in the community. Knowing that the Defendant had enrolled in another sexual offender treatment program, the Court is faced with deciding if the Defendant should go to prison for relatively minor infractions.

The deferred prosecution in 2010 and the resulting probationary-like requirements were appropriate in 2010 and even with the violation, are still appropriate because there have been no substantive negative changes.

Based on what can be referenced in this Addendum, one can still rationally argue that a prison sentence as opposed to a suspended sentence is more appropriate. However, there is other relevant information that the Court has that is not released to the public. The Court is given to understand that it cannot be released. Yet, it did, in this case, impact the sentence. Foremost, among that information, is the following:

1. The July 18, 2013, Pre-Sentence Report from the Department of Corrections to which is attached the August 10, 2009, Psychological/Psychosocial Evaluation of the Defendant consisting of 32 pages;

2. The April 29, 2008, interview of the victim by a law enforcement detective; and

3. The July 29, 2009, interview of the victim by the Defendant's attorney.

Even without the deferred prosecution of this case, had the Defendant pled guilty or been convicted by a jury three years ago, he would have had a basis from which to argue for a minimum sentence.

Therefore, based on all the circumstances, the Court upped Mr. Rambold's debt to society from the almost expired 3 years Deferred Prosecution Agreement to the 15 years suspended sentence

imposed. The Defendant will now be on probation for another 15 years, will have to complete his community based sex offender treatment and will now have to register as a convicted sex offender.

DATED this 29th day of August, 2013.

HON. G. TODD BAUGH, DISTRICT COURT JUDGE

cc: Scott Twito, Yellowstone County Attorney
Jay Lansing, Esq.

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail or by hand upon the parties or their attorneys of record at their last known address on this 29 day of August, 2013.

By: Marlene J. Considine
Judicial Asst. to HON. G. TODD BAUGH

APPENDIX 4

CLERK OF THE
DISTRICT COURT
KRISTIE LEE BOELTER

2013 SEP 3 AM 11 38

FILED

BY _____
DEPUTY

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

STATE OF MONTANA,

Plaintiff,

vs.

STACEY DEAN RAMBOLD,

Defendant.

Cause No: DC-08-628
Judge: G. Todd Baugh

NOTICE AND ORDER

The sentence as imposed was 15 years, all suspended but 31 days. The Court's intent was to impose a 15 year sentence, all suspended except for the mandatory minimum.

The Defendant's Sentencing Memorandum said the minimum was 30 days and cited M.C.A., §46-18-205(1). The State did not object or otherwise inform the Court on the issue of the applicable mandatory minimum.[1]

The Court has reviewed M.C.A., §46-18-205 and the mandatory minimum seems to be 2 years, not 30 days. M.C.A., §46-18-205(1) and (2). Sub-parts (1) and (2) are applicable and in the Court's assessment, both have to be given effect and taken into consideration.

In this Court's opinion, imposing a sentence which suspends more than the mandatory minimum would be an illegal sentence.

The 15 year term of the sentence is in compliance with M.C.A., §45-5-503.

[1] After the sentencing, the State informally said it thought the mandatory minimum was greater.

CM.730

If the State and the Defendant want to be heard on this issue, the **Court** will receive point briefs through noon on September 6, 2013, and **will hear argument** at ***1:30 P.M., on September 6, 2013, Courtroom #608, Yellowstone County Courthouse, Billings, Montana.***

The **Defendant shall be present at argument** as the Court, if necessary and appropriate, will amend the mandatory minimum portion of the sentence.

IT IS SO ORDERED.

DATED this 3rd day of September, 2013.

HON. G. TODD BAUGH, DISTRICT COURT JUDGE

cc: Scott Twito, Yellowstone County Attorney
Jay Lansing, Esq.

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by mail or by hand upon the parties or their attorneys of record at their last known address on this 3 day of September, 2013.

By Judicial Asst. to HON. G. TODD BAUGH

APPENDIX 5

08-15325

CLERK OF THE
DISTRICT COURT
KRISTIE LEE BOELTER

2013 SEP 6 PM 1 20

FILED

BY _____
DEPUTY

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

STATE OF MONTANA. Plaintiff, vs. STACEY DEAN RAMBOLD, Defendant.	CAUSE NO. DC 08-0628 Judge G. TODD BAUGH **JUDGMENT**

On the 10th day of November 2008, Defendant appeared in District Court for initial arraignment.

On the 15th day of April 2013, Defendant and counsel appeared before the Court for a change of plea hearing. A written Acknowledgement of Waiver of Rights and Plea Agreement form was filed with the Court. Defendant entered his plea of guilty to COUNT II: SEXUAL INTERCOURSE WITHOUT CONSENT (FELONY). The Court made specific findings that Defendant understood his legal and Constitutional rights, voluntarily entered the guilty plea and was not subjected to any force, threats, or promises (other than the plea agreement) in making the guilty plea.

On the 26th day of August 2013, Defendant appeared before the Court with Jay F. Lansing, his attorney, for sentencing.

In accordance with the filed plea agreement COUNT I: SEXUAL INTERCOURSE WITHOUT CONSENT (FELONY) and COUNT III: SEXUAL INTERCOURSE WITHOUT CONSENT (FELONY) are dismissed.

The Court inquired whether Defendant had any legal cause to show why judgment should not be pronounced. Defendant and counsel offered no legal cause.

577918

IT IS ORDERED that for COUNT II: SEXUAL INTERCOURSE WITHOUT CONSENT (FELONY) under § 45-5-503(3)(a) MCA, the Defendant is committed to the Montana State Prison under § 46-18-201 and § 46-18-205(1), MCA, for FIFTEEN (15) YEARS WITH ALL BUT THIRTY ONE (31) DAYS SUSPENDED.

IT IS FURTHER ORDERED Defendant will receive credit for time spent in pre-trial incarceration for the 31st day of October 2008.

IT IS FURTHER ORDERED that the said STACEY DEAN RAMBOLD is designated as a ***level 1*** offender under 46-23-509(3)(b), Montana Code Annotated.

IT IS FURTHER ORDERED that for any period of community supervision, the following conditions of probation will apply:

1. The Defendant be placed under the supervision of the Department of Corrections, subject to all rules and regulations of the Adult Probation & Parole Bureau.

2. The Defendant must obtain prior written approval from his/her supervising officer before taking up residence in any location. The Defendant shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The Defendant will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.

3. The Defendant must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.

4. The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the Defendant must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.

5. Unless otherwise directed, the Defendant must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau. The Defendant must personally contact his/her supervising officer or designee when directed by the officer.

6. The Defendant is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.

7. The Defendant must obtain permission from his/her supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.

8. Upon reasonable suspicion that the Defendant has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, and residence of the Defendant, and the Defendant must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the Defendant has violated the conditions of supervision.

9. The Defendant must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen. The Defendant is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The Defendant must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.

10. The Defendant is prohibited from using or possessing alcoholic beverages and illegal drugs. The Defendant is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

11. The Defendant is prohibited from gambling.

12. The Defendant shall pay all fines, fees, and restitution ordered by the sentencing court.

13. The Defendant shall pay the following fees and/or charges which are statutorily mandated:

    a. The Probation & Parole Officer shall determine the amount of supervision fees (§46-23-1031, MCA) to be paid each month in the form of money order or cashier's check to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620 ($50 per month if the Defendant is sentenced under §45-9-202, MCA, dangerous drug felony offense and placed on ISP). The DOC shall take a portion of the Defendant's inmate account if the Defendant is incarcerated.

    b. Surcharge of $15 for each misdemeanor. [§46-18-236(1)(a), MCA]

    c. Surcharge of the greater of $20 or 10% of the fine for each felony offense. [§46-18-236(1)(b), MCA]

    d. Surcharge for victim and witness advocate programs of $50 for each misdemeanor or felony charge under Title 45, Crimes; §61-8-401 (DUI); or §61-8-406 (DUI). [§46-18-236(1)(c), MCA]

    e. $10.00 per count for court information technology fee. (§3-1-317, MCA)

    f. Costs of assigned counsel, paid to clerk of court: (§46-8-113, MCA)

i. $250 for one or more misdemeanor charges and no felony charges or $800 for one or more felony charges.

g. A $50 fee at the time a PSI report is completed, unless the court determines the Defendant is not able to pay the fee within a reasonable time (§46-18-111, MCA). The Defendant shall submit this payment to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620. The Defendant did not pay the PSI fee.

h. The Defendant shall pay court-ordered restitution by money order or cashier's check sent to the Department of Corrections, Collection Unit, P.O. Box 201350, Helena, MT 59620. The Defendant shall be assessed a 10% administration fee on all restitution ordered. All of the methods for collection of restitution provided under §46-18-241 through §46-18-249, MCA, shall apply, including garnishment of wages and interception of tax refunds. Pursuant to §46-18-244(6)(b), MCA, the Defendant shall sign a statement allowing any employer to garnish up to 25% of his/her wages. The Defendant shall continue to make monthly restitution payments until he/she has paid full restitution, even after incarceration or supervision has ended.

i. The Defendant shall pay a fine(s) over and above any amount credited for pre-conviction incarceration as ordered and directed by the court. (§46-18-231, MCA) Recommended net fine to be paid to the Clerk of District Court: $_____.

j. The Defendant shall pay costs of legal fees and expenses defined in §25-10-201, MCA, plus costs of jury service, prosecution, and pretrial, probation, or community service supervision or $100 per felony case or $50 per misdemeanor case, whichever is greater. (§46-18-232, MCA)

14. If the Defendant is convicted of a crime listed in §46-23-502(9), MCA, he/she shall register as a sex offender. [§46-18-201(7), MCA].

15. If the Defendant is convicted of a crime listed in §46-23-502(13), MCA, he/she shall register as a violent offender. [§46-18-201(7), MCA]

16. All Defendants convicted of a felony offense shall submit to DNA testing. (§44-6-103, MCA)

17. The Defendant shall be given credit against the fine for time served in jail prior to sentencing. (§46-18-403, MCA) The Defendant will surrender to the court any registry identification card issued under the Medical Marijuana Act. [§46-18-202(1)(f), MCA]

18. The Defendant shall successfully complete Cognitive Principles & Restructuring (CP&R) or similar cognitive and behavioral modification program.

19. The Defendant shall not possess or use any electronic device or scanner capable of listening to law enforcement communications.

20. The Defendant shall abide by a curfew as determined necessary and appropriate by the Probation & Parole Officer.
21. The Defendant shall complete any community service ordered by the court or the Probation & Parole Officer.

22. The Defendant shall not enter any bars.

23. The Defendant shall not enter any casinos.

24. The Defendant shall not establish a checking or credit account.

25. The Defendant shall not knowingly associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer. The Defendant shall not associate with persons as ordered by the court or BOPP.

26. The Defendant shall not knowingly have any contact, oral, written, electronic or through a third party, with the victim(s) unless such contact is voluntarily initiated by the victim(s) through the Department of Corrections. DOC staff may notify victims about the availability of opportunities for facilitated contact with their offenders without being considered "third parties."

27. The Defendant shall attend self-help meetings at the direction of the Probation & Parole Officer.

28. The use of marijuana will be detrimental to the Defendant's rehabilitation and to the safety of the community. The Defendant is, therefore, prohibited from obtaining a medical marijuana registry card without prior authorization from the sentencing court.

29. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.

30. The Defendant shall enter and successfully complete sexual offender treatment with an MSOTA clinical member or associate member with supervision, or equivalent, who is approved by the state and the Probation & Parole Officer, at the Defendant's expense. The Defendant shall abide by all treatment rules and recommendations of the treatment provider.

31. The Defendant shall undergo annual HIV testing for the next five (5) years and make the results of each test available to the Probation & Parole Officer and the victim(s). (§46-18-256, MCA)

32. The Defendant shall not have contact with any individual under the age of 18 unless accompanied by an appropriately trained, responsible adult who is aware of the Defendant's sexual conviction and is approved by the Probation & Parole Officer and sexual offender

treatment provider. The Defendant shall sign a "No Contact" contract and abide by all conditions of the contract.

33. The Defendant shall not frequent places where children congregate unless accompanied by an appropriately trained, responsible adult who is aware of the Defendant's sexual conviction and is approved by the Probation & Parole Officer and sexual offender treatment provider. This includes, but is not limited to, schools, parks, playgrounds, malls, movies, fairs, parades, swimming pools, carnivals, arcades, parties, family functions, holiday festivities, or any other place or function where children are present or reasonably expected to be present. The Defendant shall obtain permission from the Officer prior to going to any of the above places.

34. The Defendant shall not access or have in his/her possession or under his/her control any material that describes or depicts human nudity, the exploitation of children, consensual sexual acts, non-consensual sexual acts, sexual acts involving force or violence, including but not limited to computer programs, computer links, photographs, drawings, video tapes, audio tapes, magazines, books literature, writings, etc., without prior written approval of the Probation & Parole Officer and therapist. The Defendant shall not frequent adult books stores, topless bars, massage parlors, or use the services of prostitutes.

35. The Defendant shall not view television shows or motion pictures geared toward his/her sexual offending cycle, or as a stimulus to arouse deviant thoughts or fantasies (i.e., shows based on sexualization of underage girls or boys, etc.).

36. The Defendant shall not have access to the internet without prior permission from the Probation & Parole Officer and sexual offender therapist, nor can the Defendant have on any computer he/she owns any software that is intended for data elimination, encryption or hiding data. If Internet access is allowed, the Defendant must allow the Department to install rating control software and conduct random searches of the hard drive for pornography or other inappropriate material.

37. The Defendant shall be designated a Level 1, sexual offender based on the psychosexual evaluation and other pertinent documentation. (§46-23-509, MCA)

38. The Defendant's chaperone/supervisor shall sign a statement of responsibility and be approved by both the Probation & Parole Officer and the treatment provider.

39. The Defendant shall not be involved in any type of employment, service or recreational pursuit which involves the supervision of children. Under no circumstances should the Defendant be in a position of power and authority over children.

40. The Defendant shall be subject to reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses. [§46-18-255(1), MCA]

41. The Defendant's residence, changes and any co-habitants must have prior approval of the Probation & Parole Officer. The Defendant shall not reside in a residence where there are any children under the age of 18 without the written approval of the therapist and the Officer.

42. The Defendant shall not access "900" number telephone sex lines and shall have a "900" number block on his/her telephone.

43. The Defendant shall not have a cell phone, or such other technology/device with photo, video, or Internet capabilities.

44. If cell phone use is allowed, all bills and records shall be made available to the Probation & Parole Officer.

45. The Defendant shall remain in Aftercare or Relapse Prevention Class for the entirety of his/her supervision unless released at the discretion of the Probation & Parole Officer and therapist.

46. The Defendant shall reenter treatment at any time if deemed appropriate by the Probation & Parole Officer and therapist.

47. The Defendant shall submit to annual polygraph testing.

48. The Defendant shall not date, live with, or otherwise be aligned with any person with children under the age of 18 without the express prior approval of the therapist and Probation & Parole Officer. If this approval is granted, they shall both be involved with the Defendant's treatment to the extent recommended by the treatment provider.

49. The PSI report shall be released by the Department to certain persons, such as treatment providers, mental health providers, and/or medical providers, as needed for the Defendant's rehabilitation.

If Defendant fails to comply with any of the above-conditions, the Court will: issue a bench warrant of arrest, apprehend Defendant and require him to appear before the Court for further proceedings.

Sentence was imposed for the following reasons:

1. The Court considered the contents and recommendations of the pre-sentence report along with any corrections/modifications made at the sentencing hearing, as well as the reports attached to the pre-sentence report.

2. The Court considered testimony presented at the sentencing hearing.

3. The Court considered Defendant's statement presented at the sentencing hearing.

4. The Court considered the following criteria for sentencing: non-violent circumstances/facts of the offense; Defendant's age; Defendant's employment; Defendant's education; Defendant pled guilty and accepted responsibility; Defendant's lack of criminal history; amount of pre-trial incarceration/detention time served; recommendations/arguments of counsel.

5. The Court considered the recorded interviews of the victim.

6. The Court, for the above-stated reasons, gave Defendant a suspended sentence to demonstrate whether he can successfully follow the conditions of probation.

The Bond, if any, is exonerated.

If the written judgment differs from the sentence the Judge pronounced orally, then the State or Defendant has only One Hundred Twenty (120) Days to contest the written judgment as set forth in § 46-18-116, MCA. If no party contests the written judgment within One Hundred Twenty (120) Days, the written judgment is presumed correct.

DONE In Open Court: the 26th day of August 2013.

SIGNED this 6th day of Sept. 2013.

DISTRICT COURT JUDGE

CC: YCAO - Rod Souza/sd
YCSO (C&O 08-17050)
PROBATION & PAROLE
DEFENSE COUNSEL - Jay F. Lansing

signed in compliance with 5-Ct. order this date. 9.06.13

CERTIFICATE OF SERVICE
This is to certify that the foregoing was duly served upon the parties or their counsel of record at their last-known address this __day of _____, 2013.
By:_____
Judicial Assistant to the Honorable G. Todd Baugh