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District Court Judge, Dept. 4
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CLERK OF DISTRICT COURT
2018 DEC 26 AM 11:52
FILED BY _____ DEPUTY

MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

State of Montana, Plaintiff, vs. Andrew James Corless, Defendant.	Cause No. DC-18-172 (D) JUDGMENT AND SENTENCE

On 12/20/2018 the above-named Defendant appeared with counsel for a hearing in aggravation and mitigation of sentence following the Defendant's guilty plea or conviction on 11/08/2018. The Court having considered the record now enters the following Judgment and Sentence:

1) Offense(s).

Count 1: Sexual Abuse Of Children, a Felony, in violation of Mont. Code Ann. § 45-5-625, MCA.

- ☐ The imposition of sentence is **Deferred** for a period of _____ year(s).
- ☐ The Defendant is committed to the **Department of Corrections** for a period of _____ year(s), with _____ years suspended.
- ☐ The Defendant is sentenced to the **Montana State Prison** for a period of _____ year(s), with _____ year(s) suspended.
- ☐ The Defendant is sentenced to the Flathead County Jail for a period of _____, with _____ suspended.
- ☒ Dismissed with prejudice, pursuant to the plea agreement.

Count 2: Sexual Abuse Of Children, a Felony, in violation of Mont. Code Ann. § 45-5-625, MCA.

- ☐ The imposition of sentence is **Deferred** for a period of _____ year(s).
- ☐ The Defendant is committed to the **Department of Corrections** for a period of _____ year(s), with _____ years suspended.
- ☒ The Defendant is sentenced to the **Montana State Prison** for a period of ___10___ year(s), with ___10____ year(s) suspended.

☐ The Defendant is sentenced to the Flathead County Jail for a period of _____, with _____ suspended.

☐ Dismissed with prejudice, pursuant to the plea agreement.

2) **Credit for Time Served.** Defendant is given credit for ___24____ days served in custody.

3) **Sex Offender Designation Level.** Pursuant to § 46-23-509(2), MCA, Defendant is designated a Level __1___ sex offender, because the Defendant presents a low risk of a repeat sexual offense.

4) **Conditions.** During any deferral period or suspended portion of any sentence or commitment imposed by this judgment and sentence Defendant shall be subject to the conditions contained in the attached Exhibit A.

5) **Reasons for Sentence**. In determining the sentence the Court has been guided by the sentencing policy of the State of Montana described at § 46-18-101, MCA. The policy provides that in fashioning a sentence a court is to impose a punishment commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable; to protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders; to provide restitution, reparation, and restoration to the victim of the offense; and to encourage and provide opportunities for the offender's self-improvement to provide rehabilitation and reintegration of offenders back into the community. In keeping with this policy the Court finds the following:

☒ The sentence is both consistent with the parties' plea agreement and commensurate with the punishment imposed on other persons committing the same or similar offense conduct.

☐ The sentence is consistent with the recommendation of Adult Probation and Parole.

☐ The sentence takes into account the impact of Defendant's offense conduct upon the victim(s).

☐ The sentence provides punishment commensurate with the seriousness of the offense conduct.

☐ The sentence serves to increase public safety and protect the public by imposing incarceration for Defendant's violent offense conduct and/or Defendant's serious and repeated criminal conduct.

☐ If applicable, the sentence provides for restitution, reparation, and restoration to the victim of Defendant's offense conduct.

☒ The sentence encourages and provides opportunities for Defendant's self-improvement and provides for Defendant's rehabilitation and reintegration back into the community.

6) **Bail**. Any bond or bail posted is exonerated.

7) **Objection(s) to Written Judgment**. If either party believes this written judgment does not conform to the oral pronouncement of sentence made in open court, the party must file a written request to modify this judgment within 120 days after it has been filed. Failure to file a timely request to modify the written judgment will result in waiver of the right to request modification.

DONE IN OPEN COURT on 12/20/2018.

DATED: December 26, 2018.

Dan Wilson
District Court Judge

pc: Travis Ahner, County Attorney
William L. Managhan, Attorney for Defendant
Flathead County Sheriff's Office
Adult Probation and Parole
Department of Corrections
Department of Justice
Montana State Prison

12/27/18

EXHIBIT A

STANDARD CONDITIONS

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

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, 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.

11. The Defendant is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

12. The Defendant is prohibited from gambling.

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

14. The Defendant shall pay the following fees and/or charges which are statutorily mandated. Payment is to be made to the Eleventh Judicial District, Flathead County, Montana, Clerk of Court, 920 South Main, Suite 300, Kalispell, MT 59901.

a. Defendant shall pay a surcharge of the greater of $20 or 10% of the fine for each felony offense. [§46-18-236(1)(b), MCA] Defendant to pay: $0

b. Surcharge for victim and witness advocate programs of $50 for each misdemeanor or felony charge under Title 45, Crimes; §61-8-401 (DUI); §61-8-406 (DUI-alcohol); or §61-8-411 (DUI-delta-9-tetrahydrocannabinol). [§46-18-236(1)(c), MCA] Defendant to pay: $50

c. $10.00 for court information technology fee. (§3-1-317, MCA) Defendant to pay: $10

d. The Defendant shall pay fine(s) over and above any amount credited for pre-conviction incarceration as ordered and directed by the court. (§46-18-231, MCA) Defendant to pay net fine of $0

e. 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 or $50 per misdemeanor, whichever is greater. (§46-18-232, MCA). Court orders Defendant to pay: $0

15. The Defendant shall pay costs of assigned counsel to: Office of the State Public Defender, 44 West Park Street, Butte MT 59701 or OPDfee.mt.gov

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

b. offender shall pay costs incurred by the Office of Public Defender for providing counsel in the criminal trial. Defendant to pay Public Defender Fees of $0

16. The Defendant shall pay Court Ordered supervision fees. 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.

17. There is 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. Defendant to pay $50

18. 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]

19. The Defendant, convicted of a felony offense, shall submit to DNA testing. (§44-6-103, MCA)

20. At the supervising officer's discretion, and as indicated by circumstances, the Defendant shall obtain a mental health evaluation/assessment by a state-approved evaluator. The Defendant shall pay for the evaluation and follow all of the evaluator's treatment recommendations.

21. At the supervising officer's discretion, the Defendant shall successfully complete a cognitive and behavioral modification program.

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

23. The Defendant shall abide by a curfew as determined necessary and appropriate by the Probation & Parole Officer.

24. The Defendant shall complete any community service ordered by the court or the Probation & Parole Officer.

25. The Defendant shall not enter any bars.

26. The Defendant shall not enter any casinos.

27. 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 outside a work, treatment, or self-help group setting. The Defendant shall not associate with persons as ordered by the court or BOPP.

28. The Defendant may not be a registered card holder and may not obtain or possess a registry identification card under the Montana Medical Marijuana Act while in the custody or under the supervision of the Department of Corrections or a youth court. [§50-46-307(4), MCA]

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 a clinical provider who is a member in good standing with MSOTA or its equivalent, and who is approved by the Probation & Parole Officer. The Defendant shall pay for the costs of the treatment and abide by all treatment rules and recommendations of the provider.

31. The Defendant shall obtain a psychosexual evaluation by a clinical provider who is a member in good standing with MSOTA or its equivalent and who is approved by the Probation & Parole Officer. The Defendant shall pay the costs of the evaluation and follow all recommendations of said evaluation.

32. 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)

33. The Defendant shall not knowingly have contact, oral, written, electronic or through a third party, with the victim(s) or the immediate family 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."

34. 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.

35. 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.

36. 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 book stores, topless bars, massage parlors, or use the services of prostitutes.

37. 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.).

38. 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.

39. The Defendant shall not possess or use any computer or other device with access to any on-line computer service including, but not limited to "Cloud" data storage, without the prior written approval

of the Probation & Parole Officer. The Defendant shall allow the Probation & Parole Officer to make unannounced examinations of his/her computer, hardware, and software, which may include the retrieval and copying of all data from his/her computer and computing and data storage devices. The Defendant shall allow the Probation & Parole Officer to install software to restrict the Defendant's computer access or to monitor the Defendant's computer access. The Defendant shall not possess encryption or steganography software. The Defendant shall not utilize software designed to eliminate traces of internet activity. The Defendant shall provide records of all passwords, internet service, and user identifications (both past and present) to the Probation & Parole Officer and immediately report changes. The defendant shall sign releases to allow the Probation & Parole Officer to access phone, wireless, internet, and utility records.

40. The court shall designate the Defendant as a Level 1 sexual offender based on the psychosexual evaluation and other pertinent documentation. (§46-23-509, MCA)

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

42. 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.

43. 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]

44. 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.

45. If designated a Level 3 sexual offender, and the offense was committed against a minor, the Defendant may not live in the proximity of a private or public elementary or high school, preschool, licensed daycare center, church or park maintained by a city, town or county. (§46-18-255(2), MCA)

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

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

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

49. 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.

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

51. The Defendant shall submit to annual polygraph testing.

52. 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.

53. 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.