

FILED

12/18/2018

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 17-0256

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 17-0256

FILED

DEC 18 2018

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ORDER

KEVIN FUNK,

Defendant and Appellant.

Counsel for the Appellant Kevin Funk filed a motion and brief asking to be allowed to withdraw from this appeal on grounds that she has been unable to find any nonfrivolous issues to raise on appeal, pursuant to § 46-8-103(2), MCA, and *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). Funk responded to counsel's brief and objected to counsel's motion.

The Court has now independently examined the record pursuant to § 46-8-103(2), MCA, and *Anders*. We have considered the arguments raised by counsel and by Funk in his response. We conclude there are no arguments with potential legal merit that could be raised in Funk's appeal in this case.


Therefore,

IT IS ORDERED that this appeal is DISMISSED.

The Clerk is directed to provide copies of this Order to all counsel of record and to the appellant personally.

DATED this 18<sup>th</sup> day of December, 2018.

  
Chief Justice



CLERK OF THE  
DISTRICT COURT  
LYN FRICKER

2017 MAR 1 PM 12 58

FILED BY [Signature]  
CLERK/DEPUTY

James A. Manley  
District Judge  
Lake County Courthouse  
106 Fourth Avenue East  
Polson, MT 59860-2171

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

THE STATE OF MONTANA,  
  
Plaintiff,

vs.

KEVIN B. FUNK,  
  
Defendant.

\* CAUSE NO. DC-16-200  
\*  
\*  
\*  
\* JUDGMENT AND COMMITMENT  
\*  
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The Defendant, KEVIN B. FUNK, having been convicted in this Court by plea of guilty to the offense of Count 1: Criminal Mischief, a Felony, as specified in MCA 45-6-101, Count 2: Criminal Trespass, a Misdemeanor, as specified in MCA 45-6-203, and Count 3: Criminal Trespass, a Misdemeanor, as specified in MCA 45-6-203, committed in the County of Lake, State of Montana, IT IS ADJUDGED AND DECREED, that the Defendant is guilty of the above offense.

THE COURT ORDERS that on Count 1: the Defendant is committed to the Department of Corrections for a term of five (5) years with none of that time suspended; on

JUDGMENT

1 Count 2: the Defendant is sentenced to 30 days in the Lake County Detention Center; and on  
2 Count 3: the Defendant is sentenced to 30 days in the Lake County Detention Center. Count 2  
3 shall run consecutive to Count 3. Count 1 shall run consecutive to both Counts 2 and 3. The  
4 Defendant shall receive 238 days credit against his sentence.

5 THE COURT FURTHER ORDERS that if the Defendant is granted a  
6 conditional release it shall be upon the following conditions:

- 7 1. The Defendant shall be placed under the supervision of the Department of  
8 Corrections, subject to all rules and regulations of Adult Probation & Parole.
- 9 2. The Defendant must obtain prior written approval from his/her supervising officer  
10 before taking up residence in any location. The Defendant shall not change his/her  
11 place of residence without first obtaining written permission from his/her supervising  
12 officer or the officer's designee. The Defendant must make the residence open and  
13 available to an officer for a home visit or for a search upon reasonable suspicion. The  
14 Defendant will not own dangerous or vicious animals and will not use any device that  
15 would hinder an officer from visiting or searching the residence.
- 16 3. The Defendant must obtain permission from his/her supervising officer or the  
17 officer's designee before leaving his/her assigned district.
- 18 4. The Defendant must seek and maintain employment or maintain a program approved  
19 by the Board of Pardons and Parole or the supervising officer. Unless otherwise  
20 directed by his/her supervising officer, the Defendant must inform his/her employer  
21 and any other person or entity, as determined by the supervising officer, of his/her  
22 status on probation, parole, or other community supervision.
- 23 5. Unless otherwise directed, the Defendant must submit written monthly reports to  
24 his/her supervising officer on forms provided by the probation and parole bureau.  
25 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.

JUDGMENT

Page 2

- 1 7. The Defendant must obtain permission from his/her supervising officer before  
2 engaging in a business, purchasing real property, purchasing an automobile, or  
incurring a debt.
- 3 8. Upon reasonable suspicion that the Defendant has violated the conditions of  
4 supervision, a probation and parole officer may search the person, vehicle, residence  
5 of the Defendant, and the Defendant must submit to such search. A probation and  
6 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.
- 7 9. The Defendant must comply with all municipal, county, state, and federal laws and  
8 ordinances and shall conduct himself/herself as a good citizen. The Defendant is  
9 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 10. The Defendant is prohibited from using or possessing alcoholic beverages and illegal  
11 drugs. The Defendant is required to submit to bodily fluid testing for drugs or alcohol  
12 on a random or routine basis and without reasonable suspicion.
- 13 11. The Defendant is prohibited from gambling.
- 14 12. The Defendant shall pay all fines, fees, and restitution ordered by the sentencing  
court.

#### 15 STATUTORY CONDITIONS

- 16 13. The Defendant shall pay the following fees and/or charges:
  - 17 a. The Probation & Parole Officer shall determine the amount of supervision fees  
18 (\$46-23-1031, MCA) to be paid each month in the form of money order or  
19 cashier's check to the Department of Corrections Collection Unit, P.O. Box  
20 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. **\$21.00 month**
  - 21 b. Surcharge of \$15 for each misdemeanor. [§46-18-236(1)(a), MCA] **\$30.00**
  - 22 c. Surcharge of the greater of \$20 or 10% of the fine for each felony offense.  
23 [§46-18-236(1)(b), MCA] **\$20.00**

24 JUDGMENT

Page 3

- 1 d. Surcharge for victim and witness advocate programs of \$50 for each misdemeanor  
2 or felony charge under Title 45, Crimes; §61-8-401 (DUI); §61-8-406  
(DUI-alcohol); or §61-8-411 (DUI-delta-9-tetrahydrocannabinol).  
3 [§46-18-236(1)(c), MCA] \$150.00
- 4 e. \$10.00 for court information technology fee. (§3-1-317, MCA) \$10.00
- 5 f. Costs of Criminal Trial, paid to clerk of court: (§46-8-113, MCA)
- 6 i. The Defendant shall pay costs incurred in the criminal trial. Costs incurred:  
7 \$1, 841.89
- 8 g. A \$50 fee at the time a PSI report is completed, unless the court determines the  
9 Defendant is not able to pay the fee within a reasonable time (§46-18-111, MCA).  
10 The Defendant shall submit this payment to the Department of Corrections  
11 Collection Unit, P.O. Box 201350, Helena, MT 59620. The Defendant did not  
12 pay the PSI fee. \$50.00
- 13 h. The Defendant shall pay court-ordered restitution by money order or cashier's  
14 check sent to the Department of Corrections, Collection Unit, P.O. Box 201350,  
15 Helena, MT 59620. The Defendant shall be assessed a 10% administration fee  
16 on all restitution ordered. All of the methods for collection of restitution  
17 provided under §46-18-241 through §46-18-249, MCA, shall apply, including  
18 garnishment of wages and interception of tax refunds. Pursuant to  
19 §46-18-244(6)(b), MCA, the Defendant shall sign a statement allowing any  
20 employer to garnish up to 25% of his/her wages. The Defendant shall continue to  
21 make monthly restitution payments until he/she has paid full restitution, even after  
22 incarceration or supervision has ended. **TOTAL \$4,600 for Jim Moerkerke, PO**  
23 **Box 346 Stevensville, MT, plus \$460 administration fee.**
- 24 i. The Defendant shall pay costs of legal fees and expenses defined in §25-10-201,  
25 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) **\$1,628 for cost of Prosecution.**
14. The Defendant, convicted of a felony offense, shall submit to DNA testing.  
(§44-6-103, MCA)
15. The Defendant shall be given credit against the time served in jail prior to or after  
conviction. (§46-18-403, MCA)
16. 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.

JUDGMENT

Page 4

17. The Defendant shall obtain a chemical dependency evaluation/assessment by a state-approved evaluator. The Defendant shall pay for the evaluation and follow all the evaluator's treatment recommendations.
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 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.
25. 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." **The victims are as follows: Jim Moerkerke and family, Donald & Laurie Peterson and family, Bernita Taylor and Greg A. Abramson.**
26. The Defendant shall be required to wear a GPS unit while on community supervision.
27. The Defendant shall attend self-help meetings at the direction of the Probation & Parole Officer.
28. The Defendant shall inform the Probation & Parole Officer of all prescriptions obtained from medical personnel prior to filling them. The Defendant shall take all prescription medications as prescribed and in the manner in which they were prescribed.

JUDGMENT

Page 5


- 1 29. The Defendant shall comply with all sanctions given as a result of an intervention,  
2 on-site (preliminary), or disciplinary hearing.  
3 30. The Defendant shall enter and complete an Anger Management Program to assist in  
4 dealing with his/her violent criminal behaviors.  
5 31. The PSI report shall be released by the Department to certain persons, such as  
6 treatment providers, mental health providers, and/or medical providers, as needed for  
7 the Defendant's rehabilitation.

8 THE COURT STATES its reasons for said sentence: the Defendant shows no  
9 remorse or appreciation for his criminal activity or the harm that he has caused to the members  
10 of his community and he represents a danger to his community.

11 If either party believes that the written Judgment filed herein does not conform to  
12 the oral pronouncement of this Court at the time of sentencing, either the Defendant or the  
13 State may request a hearing to modify the written, filed Judgment. **This request must be**  
14 **made by either the State or the Defendant within 120 days of the filing of the written**  
15 **Judgment.** In the event such a request is made, a hearing will be held to consider the motion at  
16 which the Defendant must be present unless Defendant waives the right to be present. If no  
17 request for modification is filed by either the State or the Defendant within 120 days, the right  
18 to a modification hearing shall be waived.

19 DATED this 22<sup>nd</sup> day of February, 2017.

20 SIGNED this 1st <sup>March</sup> day of February, 2017.

21  
22   
23 JUDGE OF THE DISTRICT COURT  
24 James A. Manley, Presiding

25 JUDGMENT

Page 6