

STATE OF INDIANA  
DELAWARE COUNTY

SS:

IN THE DELAWARE CIRCUIT  
COURT NO. 1

STATE OF INDIANA

CAUSE NO. 18C01-1302-FA-0007

v.

WILLIAM PRESTON MONTGOMERY

### ORDER ON SENTENCING HEARING

The State of Indiana appears by Eric Hoffman, Chief Trial Deputy Prosecutor, and Brooke Holding, Deputy Prosecuting Attorney; Defendant, William Montgomery, appears in person, being produced by the Sheriff of Delaware County, and by counsel, Ronald K. Smith; Telisa Bell, Adult Probation Officer, appears; all for hearing on this 14<sup>th</sup> day of August, 2013, before the Honorable Marianne Vorhees, Judge.

The Court, having entered a judgment of conviction as to Count 1, Dealing in Methamphetamine, a Class A felony; Count 2, Dealing in Methamphetamine, a Class A felony; and *Amended* Count 4<sup>1</sup>, Dealing in Methamphetamine, a Class B felony; and the Court now proceeds to sentencing and considers the pre-sentence investigation report together with the evidence as presented and the final comments of counsel.

The Court also notes the State of Indiana filed a Sentencing Memorandum on August 6, 2013; and the Defendant filed a Sentencing Memorandum on August 9, 2013. The Court has reviewed these Memoranda as well before the hearing.

The Court, being duly and sufficiently advised in this cause, now finds as follows:

Circumstances Supporting an Enhanced Sentence:

1. Defendant has one prior felony conviction for Criminal Recklessness, a Class D felony, Cause No. 18C05-1006-FD-0088; the Court gives this conviction some weight, as Defendant was convicted on August 9, 2011, and the first offense in this case occurred on August 14, 2012, which is close in time.
2. Defendant has the following misdemeanor convictions: four convictions for Check Deception, a Class A misdemeanor (Cause Nos. CDC3-86/1419; CDC3-86/1461; CDC3-86/1460; and CDC3-86/1489); three convictions for Driving While Suspended, a Class A misdemeanor (Cause Nos. 18H01-0003-CM-0642; 18H01-0009-CM-2685; and 18H01-0206-CM-1675); Disorderly Conduct, a Class B

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<sup>1</sup> The State moved to amend Count 4 prior to trial, and the Court granted the Motion and amended Count 4 on July 9, 2013.

misdemeanor (Cause No. 18H01-9706-CM-1060); Possession of Marijuana, a Class A misdemeanor (Cause No. 18H01-9903-CM-0410); Unlawful Possession of a Syringe (Cause No. 32D02-1103-FD-0200); the Court does give these convictions some weight, even though they are misdemeanors, because they show Defendant has established a pattern of criminal behavior and failure to comply with authority since 1986.

3. Defendant used a degree of care and planning in committing the offenses; Defendant made two different sales on two separate dates, Six (6) Months apart; Defendant sold to Two (2) different confidential informants; when police searched his apartment, they found drug packaging in his bedroom; the evidence leads one to infer Defendant was not a “rookie” to the drug dealing business; the Court gives this factor some weight.
4. The evidence also supports the inference that Defendant was manufacturing as well as selling methamphetamine; when the police executed the search warrant, they found cold medicine, coffee filters, Epsom salt, and a pop bottle containing sludge and a liquid; in another room, officers found drain cleaner, rubber tubing, coffee filters, and hemostats; all these items are consistent with manufacturing methamphetamine. Methamphetamine manufacture is very dangerous. It presents hazards to the neighborhood and the community at large. Dangers include explosion, chemical exposure, and leaving chemicals behind in the home and in the community; the Court gives this factor some weight.
5. Defendant was on supervised probation in Cause No. 18C05-1006-FD-0088 when he committed these offenses; the Court gives this factor great weight, as it indicates he may not respond to alternative sentencing; in addition, the offenses involved in the revocation are very serious, i.e., dealing in methamphetamine; Defendant has shown a total disdain and disregard for the court’s authority by selling, using, and manufacturing methamphetamine while on supervised probation.
6. These were three separate offenses, committed on separate dates; Defendant sold methamphetamine twice and then on another date possessed a significant quantity of methamphetamine, indicating his continued purpose and intent to deal methamphetamine.
7. On Thursday morning, July 18, 2013, almost as soon as the jurors had entered the courtroom and were seated, Defendant fell out of his chair, face first into the carpet. He would not respond and had to be transported to IU Health/Ball Memorial Hospital. The undersigned does not believe Defendant was ill but was just attempting to delay his trial. The doctor with whom counsel and the judge discussed Defendant’s ability to continue the trial did not find any medical reason for Defendant not to stand trial.

Defendant's conduct shows disrespect to the Court and to the jury. Several witnesses had to return to their businesses and then come back on Friday, including the State Police Chemist (who had to drive from Indianapolis), Muncie Police Officers, and the Day Care Owner. Delaware County had to pay additional jury fees due to Defendant's conduct. (The wasted trial day cost \$540.00 in jury fees and mileage.)

The Court gives this factor great weight. Defendant's conduct shows great disrespect to the Court, the judicial system, and to the jurors who were only doing their duty to sit as jurors.

#### Circumstances Supporting a Reduced Sentence:

1. **None.** Defendant has suggested as a mitigating circumstance his poor health, the fact that he is taking pain-killing medication for a back condition, and the fact that he is on disability. The Court rejects these circumstances as mitigating circumstances. The Department of Correction can address Defendant's medication issues and his health issues; this is not a reason to mitigate his sentence. The fact that Defendant was on disability does not mitigate his sentence. Defendant committed these offenses knowing arrest and incarceration could result in incarceration and could cause him to lose his disability benefits. In addition, his health issues did not prevent him from manufacturing and distributing methamphetamine.
2. **Remorse:** Defendant suggests the Court should consider his remorse. The Court rejects this as a mitigating circumstance. Defendant has never sought voluntarily to address his drug addiction. The Circuit Court No. 5 gave him the opportunity to address this issue, and he failed to do so. He was on probation in the Circuit Court No. 5 case when he committed these offenses.

In weighing the above factors, the Court finds the circumstances supporting an enhanced sentence greatly outweigh the circumstances supporting a reduced sentence, supporting an enhanced sentence. Although Defendant's criminal history has one felony conviction, he does have numerous misdemeanor convictions, dating back to 1986, establishing a long pattern of criminal activity and unwillingness to obey the law. Defendant was convicted and placed on probation in the Circuit Court 5 case in August, 2011, and committed the first offense in this case in August, 2012. Defendant was on supervised probation in the Circuit Court 5 case, after a period of house arrest (which he also failed), when he committed these offenses. These offenses were separate and independent and took a great deal of care and planning. The Court finds no mitigating circumstances of any significant weight at all.

Defendant's character calls for an enhanced sentence. Defendant was on supervised probation when he committed these offenses. He did not benefit from the rehabilitative opportunities provided to him in that case, including electronic home detention and supervised probation. In that case, the Court revoked his direct commitment to electronic home detention. Also in that case, Defendant was ordered to undergo a substance abuse and psychological evaluation and follow all treatment recommendations. Defendant failed to take advantage of the opportunity to address his substance abuse issues but continued to use drugs and sell drugs, resulting in the State of Indiana filing this case.

Defendant's selling, using, and manufacturing methamphetamine while on supervised probation demonstrates a significant risk that Defendant will reoffend. Defendant requires rehabilitation that can only be achieved by a commitment to a penal facility.

In addition to all the above facts which demonstrate his disdain and disrespect for authority, Defendant has also shown repeated disrespect for the criminal justice system as follows: a court has had to issue warrants in four different check deception cases due to his failure to appear. The Muncie City Court issued warrants in at least four different cases due to his failure to pay fines and costs as ordered.

In the cases outlined above, Defendant has had numerous prior opportunities to rehabilitate himself through probation, fines, costs, community service, etc. These sanctions have not proven effective in changing the Defendant's behavior and attitude.

In addition, Defendant's conduct demonstrates disrespect to the judicial system and his fellow citizens, the jurors who were summoned to hear his case. Defendant's conduct during the trial resulted in unnecessary delay and disruption to the jurors and additional costs to the county.

The nature of the offenses supports at least the advisory sentence. Defendant was dealing controlled substances within 1,000 feet of a day care. Defendant was dealing out of his house. The Drug Task Force did not set him up within the 1,000 feet distance. The Indiana Legislature has determined that this offense carries a 30 year advisory sentence.

Therefore, as to **Count 1, Dealing in Methamphetamine, a Class A felony**, Defendant is committed to the custody of the Department of Correction for a period of Forty (40) Years, executed.

Therefore, as to **Count 2, Dealing in Methamphetamine, a Class A felony**, Defendant is committed to the custody of the Department of Correction for a period of Forty (40) Years, executed.

Defendant shall serve the sentences in Counts 1 and 2 concurrently with each other.

Therefore, as to **Amended Count 4, Dealing in Methamphetamine, a Class B felony**, Defendant is committed to the custody of the Department of Correction for a period of Twelve (12) Years, Executed.

Defendant shall serve the sentence in Amended Count 4 concurrently with the sentences in Counts 1 and 2.

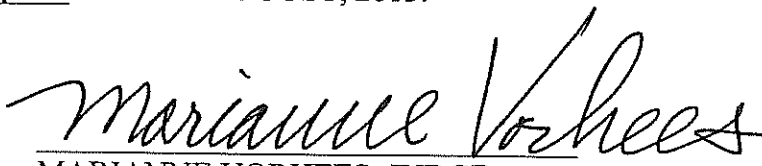
Defendant shall pay court costs of \$181.00, the \$200.00 drug interdiction fee, and the \$100.00 Public Defender Fee, but he is indigent and shall not be incarcerated for his failure to pay the same.

Defendant is given credit for time served in this matter, as follows: 201 days actually served in Delaware County Jail, which is "Class I" credit time (2/6/13 to 8/25/13).

Defendant is advised of his right to appeal in this case. The Court appoints the Office of Public Defender to appoint a public defender to represent Defendant in the appeal.

The Clerk shall issue notice to the Central State Repository of this matter's disposition.

ALL OF WHICH IS ORDERED THIS 26<sup>th</sup> DAY OF AUGUST, 2013.

  
MARIANNE VORHEES, JUDGE  
Delaware Circuit Court No. 1

Distribute to:  
State /Hoffman/Holding  
Defendant's counsel/R. Smith/P.D.  
Delaware Circuit Court No. 5  
Central State Repository  
Office of Public Defender