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FILED
TIME 4:24 P M

IN THE SUPERIOR COURT
MOHAVE COUNTY, STATE OF ARIZONA

JUN 17 2011

VIRLYNN TINNELL
CLERK SUPERIOR COURT
DEPUTY
cm

Honorable Steven F. Conn
Division: III Courtroom: A
Court Reporter: Jim Glover

Virlynn Tinnell, Clerk of Superior Court
By: Christine Murphy, Deputy Clerk
Hearing Date: June 17, 2011

STATE OF ARIZONA,

Plaintiff,

vs.

JOHN CHARLES MCCLUSKEY,

Defendant.

CASE NO: CR-2010-00823

JUDGMENT & SENTENCING PRISON

START: 3:10 P.M.

DATE OF BIRTH: February 27, 1965

The State is represented by Victoria Stazio, Deputy County Attorney; the Defendant is present with counsel, John Pecchia and Jason Steffen.

State's exhibits E0000042 through E0000045 (Pennsylvania Statutes, AZ Pen Pack, Maricopa Pen Pack, Pennsylvania Pen Pack) are marked for identification.

This is the time set for Judgment and Sentence and the time set for Hearing on the State's Motion to Add Allegation of Prior Conviction(s) as an Addendum to the Indictment.

Neither party wishes to present opening statements.

The State moves for the admission of exhibits E0000042 through E0000045 into evidence; the Defense does not oppose.

IT IS ORDERED admitting exhibits E0000042, E0000043, E0000044 and E0000045 into evidence.

Ms. Stazio presents argument.

Mr. Steffen presents argument.

Ms. Stazio presents final argument.

The Court stands in recess at 3:24 p.m. to review the documents before making its ruling.

The Court reconvenes at 3:38 p.m.; all parties heretofore mentioned are present.

The Court finds that the State has proven that the Defendant has one dangerous historical prior felony conviction as a result of the convictions from Maricopa County.

The Court declines to find that the Pennsylvania convictions are historical prior felony convictions.

Pursuant to A.R.S. §13-607, the Court finds as follows:

JURY TRIAL: The determination of guilt was based upon a verdict of guilty at jury trial.

Having found no legal cause to delay rendition of judgment and pronouncement of sentence, the Court enters the following Judgment and Sentence.

IT IS THE JUDGMENT OF THE COURT that the Defendant is guilty of the following crime(s), that upon due consideration of all the facts, law and circumstances relevant here, the Court finds that suspension of sentence and a term of probation are not appropriate and that a sentence of imprisonment with the Arizona Department of Corrections is appropriate.

THE COURT FURTHER FINDS that there are circumstances sufficiently substantial to call for a Presumptive or Aggravated or Mitigated term as indicated. These circumstances are stated by the Court on the record.

AS PUNISHMENT, IT IS ORDERED that the defendant is sentenced to a term of imprisonment and is committed to the Arizona Department of Corrections as follows:

Count 1:

OFFENSE: Escape in the Second Degree

FELONY CLASS: 5

IN VIOLATION OF A.R.S. §§: 13-2503, 13-701, 13-702, 13-703 and 13-801.

DATE OF OFFENSE: July 30, 2010

SENTENCE: 3 years with the Arizona Department of Corrections.

This is an aggravated sentence. This offense is non dangerous but repetitive; repetitive in that the Defendant has one historical prior felony conviction.

This sentence is to begin upon the completion of the sentence the Defendant is currently serving out of Maricopa County cause number CR-2009-118-185-001 SE.

Count 2:

OFFENSE: Kidnapping

FELONY CLASS: 2

IN VIOLATION OF A.R.S. §§: 1304, 13-701, 13-702, 13-703, 13-704 and 13-801.

DATE OF OFFENSE: Between July 30 and July 31, 2010

SENTENCE: 17 years with the Arizona Department of Corrections.

This is an aggravated sentence. This offense is dangerous and repetitive; repetitive in that the Defendant has one dangerous historical prior felony conviction.

This sentence is to begin upon the completion of the 3 year imposed in Count 1. The Defendant is to be given credit for 0 days served prior to sentencing.

This sentence is to run consecutive to the sentence imposed in Count 1.

Count 3:

OFFENSE: Kidnapping

FELONY CLASS: 2

IN VIOLATION OF A.R.S. §§: 13-1304, 13-701, 13-702, 13-703, 13-704 and 13-801.

DATE OF OFFENSE: Between July 30 and July 31, 2010

SENTENCE: 17 years with the Arizona Department of Corrections.

This is an aggravated sentence. This offense is dangerous and repetitive; repetitive in that the Defendant has one historical dangerous prior felony conviction.

This sentence is to begin upon the completion of the 17 year sentence imposed in Count 2. The Defendant is to be given credit for 0 days served prior to sentencing.

This sentence is to run consecutive to Count 2.

Count 4:

OFFENSE: Armed Robbery

FELONY CLASS: 2

IN VIOLATION OF A.R.S. §§: 13-1904, 13-1901, 13-701, 13-702, 13-703, 13-704 and 13-801.

DATE OF OFFENSE: Between July 30 and July 31, 2010

SENTENCE: 17 years with the Arizona Department of Corrections.

This is an aggravated sentence. This offense is dangerous and repetitive; repetitive in that the Defendant has one historical dangerous prior felony conviction.

This sentence is to begin upon the completion of the 3 year sentence imposed in Count 1. The Defendant is to be given credit for 0 days served prior to sentencing.

This sentence is to run concurrent with Count 2 but consecutive to Count 3.

Count 5:

OFFENSE: Armed Robbery

FELONY CLASS: 2

IN VIOLATION OF A.R.S. §§: 13-1904, 13-1901, 13-701, 13-702, 13-703, 13-704 and 13-801.

DATE OF OFFENSE: Between July 30 and July 31, 2010

SENTENCE: 17 years with the Arizona Department of Corrections.

This is an aggravated sentence. This offense is dangerous and repetitive; repetitive in that the Defendant has one dangerous historical prior felony conviction

This sentence is to begin upon the completion of the two 17 year sentences imposed in Counts 2 and 4. The Defendant is to be given 0 days credit served prior to sentencing.

This sentence is to run concurrent with Count 3 but consecutive to Counts 2 and 4.

Count 6:

OFFENSE: Aggravated Assault

FELONY CLASS: 3

IN VIOLATION OF A.R.S. §§: 13-1204(A)(2), 13-1203(A)(2), 13-701, 13-702, 13-703, 13-704 and 13-801.

DATE OF OFFENSE: Between July 30 and July 31, 2010

SENTENCE: 14 years with the Arizona Department of Corrections.

This is an aggravated sentence. This offense is dangerous and repetitive; repetitive in that the Defendant has one historical dangerous prior felony conviction.

This sentence is to begin upon the completion of 3 year sentence imposed in Count 1. The Defendant is to be given 0 days credit served prior to sentencing.

This sentence is to run concurrent with Counts 2 and 4; but consecutive to Counts 3 and 5.

Count 7:

OFFENSE: Aggravated Assault

FELONY CLASS: 3

IN VIOLATION OF A.R.S. §§: 13-1204(A)(2), 13-1203(A)(2), 13-701, 13-702, 13-703, 13-704 and 13-801.

DATE OF OFFENSE: Between July 30 and July 31, 2010

SENTENCE: 14 years with the Arizona Department of Corrections.

This is an aggravated sentence. This offense is dangerous and repetitive; repetitive in that the Defendant has one dangerous historical prior felony conviction.

This sentence is to begin upon the completion of the two 17 year sentences imposed in Counts 2 and 4. The Defendant is to be given 0 days credit served prior to sentencing.

This sentence is to run concurrent with Counts 3 and 5 but consecutive to Counts 2, 4 and 6.

IT IS ORDERED that Counts 2, 4 and 6 are to run concurrent with each other but consecutive the Count 1.

IT IS ORDERED that Counts 3, 5 and 7 are to run concurrent with each other but consecutive to Counts 2, 4 and 6.

Count 8:

OFFENSE: Misconduct Involving Weapons

FELONY CLASS: 4

IN VIOLATION OF A.R.S. §§: 13-3102(A)(4), 13-701, 13-702, 13-703 and 13-801.

DATE OF OFFENSE: Between July 30 and July 31, 2010

SENTENCE: 6 years with the Arizona Department of Corrections.

This is an aggravated sentence. This offense is non dangerous but repetitive; repetitive in that the Defendant has one historical prior felony conviction.

This sentence is to begin upon the completion of the two 17 year sentences imposed in Counts 3 and 5. The Defendant is to be given 0 days credit prior to sentencing.

This sentence is to be served consecutive to Counts 3, 5.

The Defendant is sentenced to a total of 43 years.

The dangerous historical prior felony conviction that the Defendant has is anyone of the following offenses: Attempted Second Degree Murder; Aggravated Assault; Discharge of a Firearm at a Structure; each is out of Maricopa County CR-2009-118185-001 SE and each was committed on March 12, 2009.

IT IS ORDERED sentencing the Defendant to a term of community supervision, under the Community Supervision Program, **for a period of 6 years and 1 month**, which is to be served consecutive to the actual term of imprisonment.

The Court reserves jurisdiction over restitution.

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Div.

6/17/2011
Date

STEVEN F. CONN
Judge

cmurphy
Deputy Clerk

NOCL-2010-00823

STATE VS. John Charles McCluskey

The Defendant is advised concerning rights of appeal/review and written notice of those rights are provided.

ORDERED exonerating any bond.

ORDERED granting the State's Motion to Dismiss any charges/allegations pursuant to the plea agreement; all charges in _____.

ORDERED authorizing the Sheriff of Mohave County to deliver the Defendant to the custody of the Arizona Department of Corrections to carry out the term of imprisonment set forth herein.

ORDERED that the Clerk of the Court shall remit to the Department of Corrections a copy of this order together with all pre-sentence reports, probation violation reports, medical and psychological reports relating to the Defendant and involving this case.

ORDERED allowing Counsel for the Defendant to withdraw as counsel of record. *following advising Defendant of appellate rights*

Let the record reflect that the Defendant's fingerprint is permanently affixed to this sentencing order in open Court.

Notice of Rights of Appeal/Review signed by the Defendant.

Hearing concludes at 4:24 ~~a.m.~~ p.m.

Steven F. Conn
Honorable Steven F. Conn

STATE OF ARIZONA }
COUNTY OF MOHAVE } ss.

I, VIRLYNN TINNELL, Clerk of the Superior Court of the State of Arizona, in And for the County of Mohave do hereby certify the foregoing to be a full, true and correct copy of the original on file in my office:

_____ day of _____, 20__.

Clerk/Deputy Clerk

[]
[Fingerprint]

cc:
Mohave County Attorney
Stephen Picchia
Attorney for Defendant
Mohave County Probation
Mohave County Jail
Mohave County Sheriff/Transport
Arizona Dept. of Corrections
Alhambra Reception Center
Honorable Steven F. Conn