



After considering the importance of restitution, NO FINE is imposed.

The Defendant shall pay applicable conviction surcharges and other fees:

- **\$20.00** Conviction Surcharge – Felony, 46-18-236(1)(b), payable to the Clerk of District Court, 1010 Main Street, Miles City, MT 59301.
- **\$10.00** Court Information Technology Surcharge, 3-1-317(1)(a), payable to the Clerk of District Court, 1010 Main Street, Miles City, MT 59301.
- **\$50.00** Victim Advocate Surcharge, 46-18-236(1)(c), payable to the Clerk of District Court, 1010 Main Street, Miles City, MT 59301.
- **Not imposed.** PSI Report fee. 46-18-111, payable to Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620.
- **Not imposed.** Cost of Prosecution. 46-18-232; payable to the Clerk of District Court, 1010 Main Street, Miles City, MT 59301.
- **Not imposed.** Cost of Assigned Counsel. 46-8-113, payable to the Office of the State Public Defender, 44 West Park Street, Butte, MT 59701. All payments for public defender fees must be in the form of a money order, certified check or cashier's check and include your court case number, address and phone number.

2. The Defendant is assessed restitution as set forth below. The Defendant shall pay court-ordered restitution by money order or cashier's check sent to the Department of Corrections, Collection Unit, PO 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 has paid full restitution, even after incarceration or supervision has ended.

Restitution is required as follows:

**\$94,075.00** to Estate of Arthur Joseph Yamada.

The imposed restitution is supported by substantial evidence of the full out of pocket loss attributable to the offense. Section 46-18-241, M.C.A. The Victim supports the claim for restitution by affidavit. Section 46-18-242(1)(b), M.C.A.

**The first priority for financial obligations is payments toward restitution.** Payment of other financial obligations of sentence is secondary to paying restitution. A key element of a 'good faith effort' to pay the obligations in full is consistent restitution payments each month. By the Defendant's agreement, the Defendant will pay **\$500.00** each month toward the restitution obligation.

3. The Defendant served **Zero (0) days** of incarceration to date. The Defendant will be granted credit against the sentence for **Zero (0) days** of pre-sentence/pre-conviction incarceration served through December 16, 2019. Section 46-18-403(1), MCA. No credit is granted against the financial obligations of sentence. Section 46-18-403(2), MCA.

4. As to COUNT 1: THEFT OF PROPERTY BY EMBEZZLEMENT, a felony, Section 45-6-301(6)(a), MCA, based on the Plea Agreement and the State's Motion, the Count 1 offense as charged in the Information is dismissed with prejudice.

5. The pretrial release conditions and requirements are vacated, except as adopted herein as conditions of supervision.

6. The Court specifically finds that based on review of the Defendant's financial resources and obligations, including the Defendant's prospects for continued employment, other assets and financial resources, the assurances of payment at the time of Sentencing, and the

adjustment to the financial obligations made by the Court, the Defendant can meet the financial obligations imposed herein reasonably and without undue hardship.

7. For the term of the sentence the Defendant shall be under the supervision of the Montana Department of Corrections, Adult Probation and Parole, and be subject to the standard rules, regulations and requirements during supervision as well as special requirements as established by the Court, namely:

1. The Defendant shall 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:
  - i. 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.
  - ii. The Defendant shall pay court-ordered restitution by money order or cashier's check sent to the Department of Corrections, Collection Unit, PO 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.
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(1), MCA)
16. The Defendant shall not be given credit against the fine for time served in jail prior to conviction. (§46-18-403(2), MCA)

17. 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.
18. The Defendant shall participate in any program or counseling deemed necessary by the supervising PO that is supported or identified through the administration of a validated risk and need assessment or subsequent secondary assessment.
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 new checking or credit account without prior approval by the supervising officer.
25. The Defendant shall provide yearly credit report.
26. 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.
27. 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."
28. The Defendant shall attend self-help meetings at the direction of the Probation & Parole Officer.
29. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.
30. The Defendant is required to disclose his/her conviction involving theft from an employer to any and all employers. [§46-23-1004(9), MCA]
31. **The Defendant shall not act as guardian, conservator, payee or fiduciary for any person or entity.**

32. 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.

The Court finds pursuant to State v. Ashby that all conditions imposed by this Court are reasonable, necessary, and associated with the Defendant's history and/or crime committed. The terms support the Defendant's successful completion of supervision.

**The Defendant is placed on notice that Pursuant to Section 46-18-116, M.C.A., if a written judgment and an oral pronouncement of sentence or other disposition conflict, the defendant may, within 120 days after filing of the written judgment, request that the court modify the written judgment to conform to the oral pronouncement. Failure to object to a conflict within 120 days after the filing of the written judgment waives the right to conform the written judgment to the oral pronouncement.**

The reasons for this disposition are as follows:

- A. The disposition is based on a disposition as agreed by the State and the Defense. The sentence prioritizes the payment of restitution. The sentence conforms to Montana's sentencing policies.

Any bond posted is exonerated, except that any cash bond posted by the Defendant shall be first applied to the financial obligations imposed herein with the balance, if any, returned to the Defendant.

The Clerk of Court will provide a copy of this Order as noted below.

Ordered from the Bench December 16, 2019 and signed December 16, 2019.

  
\_\_\_\_\_  
Michael B. Hayworth  
DISTRICT COURT JUDGE

Cc: County Attorney's Office  
Defense counsel  
Department of Corrections  
Probation & Parole  
~~Compliance Monitoring/Reos~~  
~~Treatment Court/Kope~~  
~~CCSO, 24/7 Compliance~~

**CERTIFICATE OF SERVICE**

The foregoing was duly served by U.S. Mail or Email scan upon the parties or their attorneys of record at their last known address on DEC 16, 2019.

By \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'K3', is written over a horizontal line.