

*STATE V. RICKMAN*<sup>1</sup>

A Montana court sentenced Robert Rickman to life in prison for punching and tripping a man who was a Montana lawyer and Montana Supreme Court law clerk.<sup>2</sup> The Montana Supreme Court held this was not cruel and unusual punishment and that the trial court could consider retribution as a factor in sentencing and parole eligibility. Rickman received the same sentence as a co-defendant who stabbed the former law clerk in the back.<sup>3</sup> Notably, all the justices recused themselves from this case; however, the decision was unanimous among the assigned district court judges.<sup>4</sup>

On December 8, 2006, Robert Rickman (“Rickman”) and Travis Kirkbride (“Kirkbride”) sought someone to rob in Helena, Montana, so that they could purchase marijuana.<sup>5</sup> They eventually came upon the victim, Paul Raftery (“Raftery”), and Rickman punched Raftery in the face.<sup>6</sup> Raftery then yelled for help and attempted to flee, but Kirkbride stabbed him in the back with a large knife.<sup>7</sup> Raftery again tried to get away, but Rickman tripped him.<sup>8</sup> Rickman then took Raftery’s wallet and fled with Kirkbride.<sup>9</sup> Two people later heard Raftery’s cries for help and called 9-1-1, but Raftery died on the way to St. Peter’s Hospital.<sup>10</sup>

Rickman was later arrested and charged with deliberate homicide under Montana Code Annotated § 45-5-102(1)(b) (2007), otherwise known as the felony-murder statute.<sup>11</sup> Rickman pled guilty and the district court sentenced him to life in prison without parole eligibility for 55

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<sup>1</sup> *State v. Rickman*, 183 P.3d 49 (Mont. 2008).

<sup>2</sup> *Id.* at 53.

<sup>3</sup> *Id.* at 56.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 51.

<sup>6</sup> *Id.*

<sup>7</sup> *Rickman*, 183 P.3d at 51.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

years.<sup>12</sup> Rickman subsequently appealed to the Montana Supreme Court raising three issues concerning the district court's sentencing: cruel and unusual punishment, reliance on retribution as a factor, and the restriction on parole eligibility.<sup>13</sup>

Rickman first argued that his sentence constituted cruel and unusual punishment in violation of both the Eighth Amendment of the United States Constitution and Article II, Section 22 of the Montana Constitution.<sup>14</sup> He asserted that his sentence was disproportionate to Kirkbride's, the co-defendant, because Rickman did not stab Raftery.<sup>15</sup> Rickman further contended that the disparity of his punishment was most discernable upon a historical review of felony murder sentences. Specifically, he noted that in the past decade, life sentences were given to defendants 23-years-old or younger only when they committed their crimes alone.<sup>16</sup>

The Court first noted that Rickman's sentence was within the statutory maximum guidelines, and therefore, presumably not cruel and unusual punishment.<sup>17</sup> The Court, however, acknowledged that an exception exists if a sentence "shocks the conscience and outrages the moral sense of the community or of justice."<sup>18</sup> In determining whether this exception applied, the Court considered the nature of the crime and the likelihood that the defendant would re-offend.<sup>19</sup>

The *Rickman* Court then described why it considered this crime particularly culpable; the defendants were seeking money for drugs, were not content with merely robbing the innocent victim, and ultimately left Raftery to die.<sup>20</sup> The district court also found significance in the

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<sup>12</sup> *Id.*

<sup>13</sup> *Rickman*, 183 P.3d at 51.

<sup>14</sup> *Id.* at 52.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* (citing *State v. Shults*, 136 P.3d 507, 513 (Mont. 2006)).

<sup>18</sup> *Id.* (citing *State v. Wardell*, 122 P.3d 443, 448 (Mont. 2005)).

<sup>19</sup> *Rickman*, 183 P.3d at 52–53.

<sup>20</sup> *Id.* at 52.

random nature of the violent act and the fear-inducing effect it had on the citizens of Helena.<sup>21</sup>

The Court next dismissed Rickman's argument that he was less culpable because he did not stab Raftery. The Court explained it was Rickman who approached the victim, Rickman who punched him, and Rickman who tripped Raftery after he had been stabbed.<sup>22</sup> Moreover, the sentencing transcript showed that Rickman encouraged Kirkbride to bring the knife to the robbery.<sup>23</sup>

After addressing the nature of the crime, the Court next found that Rickman was highly likely to re-offend.<sup>24</sup> The Court supported this assessment on the grounds that Rickman had been introduced to the juvenile justice system by the age of 12, and he had been adjudicated a juvenile delinquent by the age of 18.<sup>25</sup> Based on these facts, the Court held Rickman's sentence did not violate the prohibition against cruel and unusual punishment.<sup>26</sup>

Because the Court determined that Rickman's sentence did not shock the conscience, it declined to further address Rickman's argument that his punishment was disproportionate.<sup>27</sup> While the Court noted Rickman's historical contention, it followed prior precedent for non-death penalty cases by leaving "detailed proportionality analysis to the Sentence Review Board."<sup>28</sup>

The second issue appealed concerned whether a court could consider retribution as a factor in sentencing. Rickman argued that retribution could not be considered because that term is not contained in the Montana correctional and sentencing policies.<sup>29</sup> Rickman further

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<sup>21</sup> *Id.* at 52.

<sup>22</sup> *Id.* at 53.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Rickman*, 183 P.3d at 53.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 52.

<sup>28</sup> *Id.* at 53 (citing *Shults*, 136 P.3d at 513).

<sup>29</sup> *Id.* (citing Mont. Code Ann. §§ 46-18-102(2); 46-18-101(3)).

contended that he was given the life sentence not because of his crime, but because of whom he committed it against; Raftery was a Montana attorney and Montana Supreme Court law clerk.<sup>30</sup>

The Court dismissed both Rickman's contention because the district court was in compliance with the statutory scheme of sentencing, prior case law had acknowledged the use of retribution in sentencing, and retribution was not the primary focus of Rickman's sentence.

While the Court recognized the absence of the term "retribution" in the sentencing statutes, it noted the district court could consider a broad range of factors.<sup>31</sup> Montana Code Annotated § 46-18-101(2) states Montana's sentencing policy is to:

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(a) punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable;

(b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders;

(c) provide restitution, reparation, and restoration to the victim of the offense[.]<sup>32</sup>

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Moreover, the Court underscored that Montana Code Annotated § 46-18-115(4) permitted Raftery's family to testify directly to the district court regarding sentencing.<sup>33</sup> From these statutes, the Court found it was within the district court's wide latitude of discretion to assess the intricacies of the crime, the welfare of the community, and the resulting loss to Raftery's family.<sup>34</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> *Rickman*, 183 P.3d at 53.

<sup>32</sup> *Id.* (citing Mont. Code Ann. § 46-18-101(2)).

<sup>33</sup> *Id.* at 54 (citing Mont. Code Ann. § 46-18-115(4)).

<sup>34</sup> *Id.*

The Court buttressed its holding as to retribution by looking at prior case law. The Court cited five Montana Supreme Court cases as well as a United States Supreme Court decision all recognizing retribution as a proper element of punishment.<sup>35</sup>

The Court further noted that while the pre-sentence investigation report included Raftery's social status, the "Evaluation/Recommendation" section gave no reference to Raftery's position in the legal community.<sup>36</sup> The Court also found significant that retribution was only the third factor considered in sentencing; it was preceded by Rickman's lack of potential for rehabilitation as well as the substantial violent threat he posed to society.<sup>37</sup> Pursuant to this analysis, the Court held the district court did not abuse its discretion by considering retribution or the effect of the crime on Raftery's family in sentencing Rickman.<sup>38</sup>

Lastly, the Court addressed Rickman's third issue on appeal—whether the district court could impose a parole eligibility restriction for 55 years.<sup>39</sup> Rickman focused on the language of Montana Code Annotated § 46–18–202(2), which states, "the sentencing judge may also impose the restriction that the offender is ineligible for parole."<sup>40</sup> Based on this statute, Rickman contended that the judge can only allow Rickman to be eligible for parole or not, as opposed to some combination in between.<sup>41</sup>

The Court rejected this argument for four reasons. First, Montana Code Annotated § 46–18–202(1)(f) empowers trial court judges to attach to sentences "any other limitation reasonably

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<sup>35</sup> *Id.* (citing *Matter of C.S.*, 687 P.2d 57, 59 (Mont. 1984); *Matter of B.L.T.*, 853 P.2d 1226, 1229 (Mont. 1993); *Fazier v. Mont. State Dept. of Corrects.*, 920 P.2d 93, 96 (Mont. 1996); *State v. Nelson*, 910 P.2d 247, 250 (Mont. 1996); *State v. Mount*, 78 P.3d 829, 839 (Mont. 2003); *U.S. v. Halper*, 490 U.S. 435, 448 (1989)).

<sup>36</sup> *Id.*

<sup>37</sup> *Rickman*, 183 P.3d at 53.

<sup>38</sup> *Id.* at 54.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* (citing Mont. Code Ann. § 46–18–202(2)).

<sup>41</sup> *Id.*

related to the objectives of rehabilitation and protection of the victim and society.”<sup>42</sup> Second, the Montana Supreme Court previously affirmed such a sentence in *State v. Thomas*, deeming it a “discretionary parole restriction.”<sup>43</sup> Third, limiting sentencing judges to all or nothing parole restrictions runs contrary to Montana Code Annotated § 46–18–101(3)(d), which permits extensive “judicial discretion to consider aggravating and mitigating circumstances.”<sup>44</sup> Finally, Montana’s legislative inaction in banning partial eligibility restrictions caused the Court to presume the legislature approved of such restrictions.<sup>45</sup>

Accordingly, the Court upheld the district court’s sentence and held the sentence did not constitute cruel and unusual punishment, retribution was permissibly considered, and the parole eligibility restriction was appropriate.<sup>46</sup>

*Rickman*, clarifies the sentencing structure for co-defendants who are found guilty of felony murder. Only time will tell, however, if Montana courts will continue to discard with leniency in assessing violent crimes resulting in tragic deaths. Questions also remain concerning the extent to which retribution may be considered. While the Court upheld retribution when it was the third factor in sentencing, would it have done the same if it was the first? Despite this uncertainty, the Montana Supreme Court has unequivocally approved parole eligibility restrictions imposed by district courts. Further, this case demonstrates that although the Montana criminal justice system presumably remains blind to a victim’s identity and social status, it retains an acute sight to the nature of the crime and its impact on the victim’s family.

— *Karla Painter*

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<sup>42</sup> *Id.* at 55 (quoting Mont. Code Ann. § 46–18–202(1)(f)).

<sup>43</sup> *Rickman*, 183 P.3d at 55 (quoting *State v. Thomas*, 946 P.2d 140, 147 (Mont. 1997)).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 56.