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BY K. RASMUSSEN
DEPUTY

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

<p>THE STATE OF MONTANA, Plaintiff, v. ARTHUR LEROY HEFFELFINGER, Defendant.</p>	<p>Cause No. CDC-2010-21 JUDGMENT AND COMMITMENT</p>
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On January 12, 2010, an Information was filed charging Defendant Arthur Leroy Heffelfinger with: Count I, Operating a Pyramid Promotional Scheme (Ponzi Scheme), a felony, in violation of Mont. Code Ann. Sections 30-10-324(6)(b) and -325; Count II, Theft (Common Scheme), a felony, in violation of Mont. Code Ann. Sections 45-6-301(2)(b) and 45-2-101(8); and Count III: Exploitation of an Older Person (Common Scheme), a felony, in violation of Mont. Code Ann. Sections 52-3-825 and 45-2-101(8). On January 21, 2010, Defendant appeared with his attorney Brendan McQuillan and entered pleas of not guilty to the offenses charged.

On June 28, 2010, an Amended Information was filed charging Defendant with the same offenses, but removing the victim of the Elder Exploitation

1 charge from the first two counts. On July 1, 2010, a hearing was held for the purposes
2 of entering pleas to the amended offenses. The Defendant was present with his
3 attorneys Brendan McQuillan and Candida Quinn, and the State was represented by
4 Jesse Laslovich and Mike Winsor, Special Assistant Attorneys General and Special
5 Deputy Lewis and Clark County Attorneys. Defendant advised the Court that he was
6 prepared to enter guilty pleas to amended Count I, Operating a Pyramid Promotional
7 Scheme (Ponzi Scheme), and Count II, Theft (Common Scheme), and presented to the
8 Court a document entitled, *Acknowledgment of Waiver of Rights by Plea of Guilty*.
9 The Court determined from Defendant and his attorneys that Defendant was entering
10 his plea voluntarily and that he was aware of the constitutional and statutory rights
11 that he would waive by entering pleas of guilty. The Court determined that there was
12 a factual basis to believe that Defendant had committed the offenses of Operating a
13 Pyramid Promotional Scheme (Ponzi Scheme) and Theft (Common Scheme) and
14 accepted Defendant's guilty pleas. Defendant then entered a plea of not guilty to the
15 amended offense of Exploitation of an Older Person (Common Scheme).

16 A bench trial for the remaining charge of Exploitation of an Older
17 Person (Common Scheme) was held October 25-26, 2010. Defendant was present and
18 was represented by Brendan McQuillan and Candida Quinn, and the State was
19 represented by Jesse Laslovich and Mike Winsor. The Court subsequently entered
20 written Findings of Fact and Conclusions of Law, and found Defendant guilty of the
21 charge. A pre-sentence investigation report was ordered.

22 Defendant was sentenced on January 25, 2011. He was present with his
23 attorneys Brendan McQuillan and Candida Quinn. A pre-sentence investigation
24 report, prepared by Probation/Parole Officer Lori Moore, was provided to all involved
25 parties prior to sentencing. Katharine Brown , Eric Westberg, and Probation/Parole

1 Officer Lori Moore were duly sworn and testified on behalf of the State. Desiree
2 Fehr, LCSW; William Hooks, attorney-at-law; Stephen Riley, a friend of the
3 Defendant; Michael Hankins, a friend of the Defendant; Cory Davis, the Defendant's
4 bishop; Victor Schoessler, the Defendant's landlord; and William Snoddy, a friend of
5 the Defendant, testified on behalf of the defendant. Defendant gave a statement. The
6 parties presented sentencing recommendations. The Court, having considered the pre-
7 sentence investigation report, the testimony and evidence presented, the arguments of
8 counsel, and being fully advised in the premises, entered the following

9 JUDGMENT AND COMMITMENT:

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that for
11 Count I: OPERATING A PYRAMID PROMOTIONAL SCHEME (PONZI
12 SCHEME), a felony, Defendant is sentenced to the Montana State Prison for a period
13 of ten (10) years; for Count II: THEFT (COMMON SCHEME), a felony, Defendant
14 is sentenced to the Montana State Prison for a period of ten (10) years, with ten (10)
15 years suspended, to run consecutively to Counts I and III; and for Count III:
16 EXPLOITATION OF AN OLDER PERSON (COMMON SCHEME), a felony,
17 Defendant is sentenced to the Montana State Prison for a period of ten (10) years, to
18 run concurrently with Count I. These sentences are subject to the following
19 conditions:

20 1. Subsequent to Defendant's period of imprisonment, he shall be
21 placed under the supervision of the Department of Corrections, subject to all rules and
22 regulations of the Adult Probation and Parole Bureau.

23 2. Defendant must obtain prior approval from his supervising
24 officer before taking up residence in any location. Defendant shall not change his
25 place of residence without first obtaining written permission from his supervising

1 officer or the officer's designee. He shall make the residence open and available to an
2 officer for a home visit or for a search upon reasonable suspicion. Defendant shall not
3 own dangerous or vicious animals and shall not use any device that would hinder an
4 officer from visiting or searching the residence.

5 3. Defendant must obtain permission from his supervising officer or
6 the officer's designee before leaving his assigned district.

7 4. Defendant must seek and maintain employment or maintain a
8 program approved by the Board of Pardons and Parole or his supervising officer.

9 Unless otherwise directed by his supervising officer, Defendant shall inform his
10 employer and any other person or entity, as determined by his supervising officer, of
11 his status on probation, parole, or other community supervision.

12 5. Unless otherwise directed, Defendant must submit written
13 monthly reports to his supervision officer on forms provided by the Adult Probation
14 and Parole Bureau. Defendant must personally contact his supervising officer or
15 designee when directed by the officer.

16 6. Defendant is prohibited from using, owning, possessing,
17 transferring, or controlling any firearm, ammunition (including black powder),
18 weapon, or chemical agent such as oleoresin capsicum or pepper spray.

19 7. Defendant must obtain permission from his supervising officer
20 before engaging in a business, purchasing real property, purchasing an automobile, or
21 incurring a debt.

22 8. Upon reasonable suspicion that Defendant has violated the
23 conditions of supervision, a probation and parole officer may search Defendant's
24 person, vehicle, and residence, and Defendant shall submit to such search. A
25 probation and parole officer may authorize a law enforcement agency to conduct a

1 search, provided the probation and parole officer determines reasonable suspicion
2 exists that Defendant has violated the conditions of supervision.

3 9. Defendant must comply with all municipal, county, state, and
4 federal laws and ordinances, and shall conduct himself as a good citizen. Defendant is
5 required, within 72 hours, to report any arrest or contact with law enforcement to his
6 supervising officer or designee. He must be cooperative and truthful in all
7 communications and dealings with any probation and parole officer and with any law
8 enforcement agency.

9 10. Defendant is prohibited from using or possessing alcoholic
10 beverages and illegal drugs. Defendant is required to submit to bodily fluid testing for
11 drugs or alcohol on a random or routine basis and without reasonable suspicion.

12 11. Defendant is prohibited from gambling.

13 12. Defendant shall pay all fees and restitution in the amount of
14 \$156,586.79 to KMS Financial Services, Inc., and \$838,550.77 to U.S. Fire Insurance.

15 13. The probation and parole officer will determine the amount of
16 Defendant's restitution payments while Defendant is on supervision; otherwise, the
17 Department of Corrections will take a portion of Defendant's inmate account while he
18 is incarcerated. All restitution payments will be made by money order or cashier's
19 check and sent to the Department of Corrections, Collection Unit, P.O. Box 201350,
20 Helena, MT 59620. Defendant shall be assessed a 10 percent administration fee on
21 all restitution ordered. All of the methods for collection of restitution provided for
22 under Mont. Code Ann. Sections 46-18-241 through -249 shall apply, including
23 garnishment of wages and interception of tax refunds. Pursuant to Mont. Code Ann.
24 Section 46-18-244(6)(b), Defendant shall sign a statement allowing any employer to
25 garnish up to 25 percent of his wages. Defendant shall continue to make monthly

1 restitution payments until he has paid full restitution, even after incarceration or
2 supervision has ended.

3 14. Defendant shall pay to the Department of Corrections, a \$50 fee
4 at the time that the Pre-Sentence Investigation report is completed. Defendant is to
5 submit this payment to the Department of Corrections Collection Unit, P.O. Box
6 201350, Helena, MT 49620.

7 15. Pursuant to Mont. Code Ann. Section 46-23-1031, Defendant
8 shall pay supervision fees each month by money order or cashier's check to the
9 Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620.

10 16. Defendant shall pay surcharges, fines, court costs and fees to the
11 Court's restitution and finance officer located in the courthouse, 228 Broadway,
12 Helena, MT 59601 (telephone: 406-447-8231), on a schedule which he shall arrange
13 with the officer. Defendant shall advise the officer of any factors which may affect
14 Defendant's ability to pay the financial obligation or the officer's ability to contact
15 Defendant.

16 17. Pursuant to Mont. Code Ann. Section 46-8-113, Defendant shall
17 pay costs of assigned counsel to be paid by money order or cashier's check payable to
18 the Department of Administration, Office of the Public Defender, 44 West Park,
19 Butte, MT 59701.

20 18. Pursuant to Mont. Code Ann. Section 44-6-103, Defendant shall
21 submit to DNA testing.

22 19. Defendant shall obtain mental health care by a state approved
23 evaluator. He shall follow all of the evaluator's treatment recommendations.
24 Defendant shall waive any rights of confidentiality which he may have associated with

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1 recommendations and treatment so that the treating therapist may confer with
2 Defendant's supervising officer.

3 20. Defendant shall successfully complete Cognitive Principles &
4 Restructuring (CP&R) or a similar cognitive and behavioral modification program.

5 21. Defendant will complete 80 hours of community service per year
6 for 5 years, under the direction of the Community Service Director located in the
7 courthouse, 228 Broadway, Helena, MT 59601 (telephone 406-447-8227) and pay
8 any fees associated with the program.

9 22. Defendant shall not enter any bars or casinos.

10 23. Defendant shall not associate with probationers, parolees, prison
11 inmates, or persons in the custody of any law enforcement agency without prior
12 approval from his probation and parole officer. Defendant shall not associate with
13 persons as ordered by the Court or the Board of Pardons and Parole.

14 24. Defendant shall not have any contact, directly or indirectly, with
15 the victims and victims' families without prior approval from his supervising officer.

16 25. Defendant shall not be involved in any type of employment,
17 service project, or recreational pursuit that involves handling funds, financial
18 transactions, or gaining control over another's property or financial matters.

19 26. Defendant shall not advise or give counsel to others in financial
20 or investment matters.

21 27. Defendant shall execute a Release of Information for the Adult
22 Probation and Parole Bureau or its designated representative to review all of his
23 financial records, to include bank records, credit records, trusts, wills, income tax
24 filings, investment accounts, stocks, bonds, insurance, and any other accounts or
25 instruments requested by the Adult Probation and Parole Bureau. This shall apply to

1 any accounts or records that Defendant may own or be responsible for jointly with
2 another person, partnership, or corporation.

3 28. Defendant shall cooperate with a referral for credit counseling
4 services if directed by his supervising officer.

5 **Pursuant to Mont. Code Ann. Section 46-18-116, the parties are**
6 **advised that if a written judgment and an oral pronouncement of sentence or**
7 **other disposition conflict, the Defendant or the prosecutor in the county in which**
8 **the sentence was imposed may, within 120 days after filing of the written**
9 **judgment, request that the Court modify the written judgment to conform to the**
10 **oral pronouncement. The Court shall modify the written judgment to conform**
11 **to the oral pronouncement at a hearing, and the Defendant must be present at**
12 **the hearing unless the Defendant waives the right to be present or elects to**
13 **proceed pursuant to Mont. Code Ann. Section 46-18-115. The Defendant and the**
14 **prosecutor waive the right to request modification of the written judgment if a**
15 **request for modification of the written judgment is not filed within 120 days after**
16 **the filing of the written judgment in the sentencing court.**

17 In imposing the foregoing sentence, this Court considered the evidence
18 presented, including the pre-sentence investigation report and Mont. Code Ann.
19 Sections 46-18-101 and -225. The Court finds that this sentence complies with the
20 sentencing policy of the state of Montana. While these crimes were nonviolent
21 crimes, the Court finds that an alternative to imprisonment is not appropriate. The
22 interests of justice truly require imprisonment. While the Court is convinced that
23 Defendant suffers from post traumatic stress disorder (PTSD), that diagnosis does not
24 excuse his criminal behaviors. Mental health treatment is available at the prison.
25 There was no testimony indicating Defendant acted for eleven years under strong

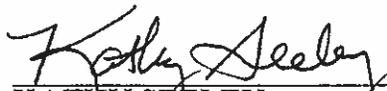
1 provocation, and he had not paid restitution at the time of sentencing. Defendant does
2 not have a documented prior criminal record, but the duration of these crimes
3 establishes that he has committed crimes for over ten years. While testimony indicates
4 Defendant will no longer be able to act as a financial adviser, the Court cannot find
5 that his criminal conduct was the result of circumstances unlikely to recur. Likewise,
6 the Court is unable to determine whether the character and attitude of Defendant
7 indicate he is likely to commit another crime. He expressed great remorse, but his
8 criminal activity was a long established pattern of behavior. Finally, no evidence was
9 presented indicating that imprisonment would create an excessive hardship on
10 Defendant or his family. Defendant stands convicted of three felonies. His
11 documented criminal activities covered a period of approximately eleven years. He
12 had multiple victims, and his victims included a vulnerable elderly person. He
13 misappropriated millions of dollars. The sentence provides punishment
14 commensurate with the nature and degree of harm caused by the offenses and holds
15 Defendant accountable. The Court finds that he is a serious repeat offender and his
16 sentence is appropriate.

17 Any instrumentalities of the crime or contraband seized during this
18 investigation are forfeited and shall be disposed of as provided by law.
19 Any bond posted in this matter is exonerated.

20 Done in open court the 25th day of January, 2011.

21 DATED at Helena, Montana, this 3rd day of Feb, 2011.

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KATHY SEELEY
DISTRICT COURT JUDGE

1 pc: Brendan McQuillan
2 Candida Quinn
3 Assistant Public Defenders
4 Office of the State Public Defender
5 139 North Last Chance Gulch
6 Helena MT 59601

7 Jesse Laslovich
8 Mike Winsor
9 Special Assistant Attorneys General
10 Office of the Commissioner of Securities
11 and Insurance, Montana State Auditor
12 840 Helena Avenue
13 Helena MT 59601

14 T/KS/state v heffelfinger j&c.wpd

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