

SUPREME COURT OF THE STATE OF MONTANA

State v. Spence

2007 MT 52N (2007) · No. DA 06-0215 · Decided February 27, 2007

SUMMARY

The Montana Supreme Court affirmed the denial of Todd Spence’s motion challenging his continuing obligation to pay restitution after discharge of his sentence. The court held that applying the 2003 amendments to Montana’s restitution statute did not violate the ex post facto prohibition because restitution is not punishment and the amendments did not increase the punishment burden or eliminate an available defense. The memorandum decision was designated noncitable under the Montana Supreme Court’s internal operating rules.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	John Warner; Karla M. Gray; Patricia Cotter; W. William Leaphart; Jim Rice
JURISDICTION	Montana
DECIDED	February 27, 2007
DOCKET	DA 06-0215
DISPOSITION	affirmed
PROCEDURAL POSTURE	Todd Spence appealed the Fifth Judicial District Court's order denying his motion seeking a determination that he was not required to pay restitution on a discharged sentence.
STANDARD OF REVIEW	The court reviewed the legal issue de novo and affirmed because settled Montana law controlled and the District Court correctly interpreted the law.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Todd Spence v. State of Montana

TOPICS

- restitution criminal
- ex post facto
- criminal procedure
- statutory interpretation
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether applying the 2003 amendments to Montana's restitution statute to continue collecting restitution imposed for offenses committed and sentenced before the amendments constituted an ex post facto violation.
2. Whether the 2003 amendments increased Spence's punishment burden, imposed punishment for conduct that was not criminal when committed, or deprived him of a defense available when the offenses occurred.

HOLDINGS

1. The application of the 2003 amendments to section 46-18-241, MCA, did not violate ex post facto principles because restitution is not punishment and the amendments did not impose an additional crime, increase the punishment burden, or deprive Spence of a previously available defense.

KEY QUOTATIONS

"This Court has held that a law is ex post facto if it: (1) punishes as a crime an act which was not unlawful when committed; (2) makes punishment for a crime more burdensome; or (3) deprives [a] person charged with a crime of any defense available under the law at the time the act was committed." (¶ 5)

"Restitution is not punishment. Restitution is a civil remedy administered for judicial convenience." (¶ 6)

FACTUAL BACKGROUND

In June and July 1999, Spence issued four bad checks totaling \$2,240. He pleaded guilty in February 2000 and received a suspended three-year prison sentence conditioned in part on payment of restitution. After violating the conditions, he was resentenced in April 2002, with all original terms, including restitution, remaining in effect; although the sentence was later discharged, the Department of Corrections continued collecting one-third of his prison wages for restitution.

PROCEDURAL HISTORY

Spence pleaded guilty to felony issuing a bad check and received a suspended three-year prison sentence conditioned on payment of restitution. After violating the conditions, he was resentenced in 2002, with the restitution obligation remaining in effect. The District Court denied his later motion challenging continued restitution collection, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Mount, 2003 MT 275, ¶ 24, 317 Mont. 481, 78 P.3d 829

- Langford v. State, 287 Mont. 107, 114, 951 P.2d 1357, 1361 (1997)
- State v. Field, 2005 MT 181, ¶ 29, 328 Mont. 26, 116 P.3d 813

OPINION

PER CURIAM.

No. DA 06-0215 IN THE SUPREME COURT OF THE STATE OF MONTANA 2007 MT 52N
 _____ STATE OF MONTANA, Plaintiff and Respondent, v.
 TODD SPENCE, Defendant and Appellant. _____
 APPEAL FROM: District Court of the Fifth Judicial District, In and for the County of Jefferson,
 Cause No. DC 99-1661, The Honorable Loren Tucker, Presiding Judge.

COUNSEL OF RECORD: For Appellant: Todd Spence (pro se), Deer Lodge, Montana For
 Respondent: Hon. Mike McGrath, Attorney General; Ilka Becker, Assistant Attorney General,
 Helena, Montana Mathew J. Johnson, County Attorney, Boulder, Montana
 _____ Submitted on Briefs: January 10, 2007 Decided:
 February 27, 2007 Filed: _____ Clerk Justice
 John Warner delivered the Opinion of the Court. ¶1 Pursuant to Section 1, Paragraph 3(d)(v),
 Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following
 memorandum decision shall not be cited as precedent.

It shall be filed as a public document with the Clerk of the Supreme Court and its case title,
 Supreme Court cause number and disposition shall be included in this Court's quarterly list of
 noncitable cases published in the Pacific Reporter and Montana Reports. ¶2 Todd Spence appeals
 from an order of the Fifth Judicial District Court, Jefferson County, denying his motion for an
 order that he is not required to pay restitution on a discharged sentence.

We affirm. ¶3 In June and July 1999, Spence issued four bad checks in the total amount of
 \$2,240.00. On February 7, 2000, Spence plead guilty to Issuing a Bad Check, a felony. The
 District Court sentenced Spence to three years at Montana State Prison, suspended subject to the
 performance of conditions including payment of restitution pursuant to § 46-18-241(1), MCA
 (1997).

Spence immediately violated the conditions of his suspended sentence. The District Court
 resentenced him in April 2002. In its re-sentencing order the District Court required all terms and
 conditions to remain in full force and effect--including payment of restitution. Spence's sentence
 originally entered in 2000, based on 1999 offences, has been discharged.

Spence is currently incarcerated on other offenses. Department of Corrections is collecting one-
 third of Spence's prison wages to pay restitution on the 2000 sentence. 2 ¶4 Section 46-18-241(1),
 MCA, which authorizes a court to impose a restitution obligation, was amended by the 2003

legislature. Spence argues that requiring him to pay restitution is an ex post facto application of the law because the restitution statute was amended after he committed the offense and was sentenced.

Spence challenges neither the District Court's ability to require full restitution on a discharged sentence, nor the determination by the District Court that there has been no good reason stated for relief from the obligation to pay restitution. ¶5 This Court has held that a law is ex post facto if it: (1) punishes as a crime an act which was not unlawful when committed; (2) makes punishment for a crime more burdensome; or (3) deprives [a] person charged with a crime of any defense available under the law at the time the act was committed.

State v. Mount, 2003 MT 275, ¶ 24, 317 Mont. 481, ¶ 24, 78 P.3d 829, ¶ 24 (citing Langford v. State, 287 Mont. 107, 114, 951 P.2d 1357, 1361 (1997)). ¶6 Restitution is not punishment. Restitution is a civil remedy administered for judicial convenience. State v. Field, 2005 MT 181, ¶ 29, 328 Mont. 26, ¶ 29, 116 P.3d 813, ¶ 29 (2005). Both the 1997 and the 2003 versions of § 46-18-241, MCA, state that an offender's obligation to make restitution continues until it is paid in full.

The adoption of the 2003 amendments to § 46-18-241, MCA, did not (1) result in the charge of an additional crime which was not unlawful when committed, (2) increase the punishment burden, or (3) deprive Spence of a defense available under the law. ¶7 The facts in this case are not contested. It is manifest on the face of the briefs and record before us that settled Montana law clearly controls the legal issues and that the District Court correctly interpreted the law.

3 ¶8 Affirmed. /S/ JOHN WARNER We Concur: /S/ KARLA M. GRAY /S/ PATRICIA COTTER /S/ W. WILLIAM LEAPHART /S/ JIM RICE 4