

SUPREME COURT OF THE STATE OF MONTANA

State v. Lamere

2011 MT 304N (Supreme Court of the State of Montana 2011) · No. DA 11-0278 · Decided December 6, 2011

SUMMARY

The Montana Supreme Court affirmed the denial of Paul D. Lamere’s motions for additional credit for time served and to remove conditions from his burglary sentence. The court held that Lamere was not entitled to credit for electronic monitoring or time associated with a separate Cascade County proceeding, and that the remaining sex-offender-related conditions were sufficiently connected to the offense and supported by the plea agreement and sentencing record. The court designated the decision as a noncitable memorandum opinion.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Beth Baker; Mike McGrath; James C. Nelson; Patricia Cotter; Brian Morris
JURISDICTION	Montana
DECIDED	December 6, 2011
DOCKET	DA 11-0278
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lamere appealed the Yellowstone County District Court's April 26, 2011 order denying his motions for additional credit for time served and to amend the judgment by striking conditions of his burglary sentence.
STANDARD OF REVIEW	The Supreme Court reviewed whether the District Court correctly interpreted settled Montana law and whether Lamere demonstrated error; the opinion does not state a separate formal standard of review.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Paul D. Lamere v. State of Montana

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Lamere could obtain removal of additional conditions of his sentence after failing to challenge those conditions on direct appeal and having agreed in his plea agreement to complete sex-offender treatment.
2. Whether Lamere was entitled to credit against his prison sentence for time spent on electronic monitoring or home arrest while released on bond before sentencing.
3. Whether Lamere was entitled to credit for incarceration attributable to the separate Cascade County theft-related probation-revocation proceeding.

HOLDINGS

1. Lamere was not entitled to strike the additional conditions of his sentence because he failed to challenge them on direct appeal, agreed in his written plea agreement to complete sex-offender treatment, and the conditions had a sufficient nexus to the burglary offense and to Lamere.
2. Lamere was not entitled to credit against his prison sentence for time spent on electronic monitoring while released on bond before sentencing.
3. Lamere was not entitled to additional credit for incarceration attributable to the Cascade County theft-related probation-revocation proceeding because that credit had to be addressed in that proceeding and he provided no evidence or legal authority establishing entitlement.

KEY QUOTATIONS

“A district court may fashion sentence conditions which have either a nexus to the offense for which the offender is being sentenced, or to the offender himself.” (¶ 8)

“‘Home arrest’ is a procedure for serving a suspended sentence and [the law] ‘does not require that [the defendant] receive credit for the time he spent on formal house arrest as a condition of his pretrial release.’” (¶ 9)

FACTUAL BACKGROUND

Lamere pleaded guilty to burglary after admitting that he entered the home of an eighty-two-year-old woman with the purpose of sexually assaulting her. His plea agreement required completion of Phase I sex-offender treatment but did not require sex-offender registration. The District Court imposed a forty-five-year sentence with ten years suspended, originally designated him a Level II sex offender, and imposed additional sex-offender-related conditions. Lamere sought credit for time spent on electronic monitoring and in custody connected with a separate probation-revocation proceeding, as well as removal of additional sentence conditions.

PROCEDURAL HISTORY

Lamere pleaded guilty to burglary under a plea agreement that dismissed an attempted-sexual-intercourse charge. The District Court imposed a forty-five-year sentence with ten years suspended and included sex-offender-related conditions and a Level II designation. The Montana Supreme Court previously remanded for removal of the Level II designation. On remand, the District Court denied Lamere's additional requests to strike sentence conditions and to receive credit for home arrest and time associated with a separate Cascade County proceeding; the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Ashby, 2008 MT 83, ¶ 15, 342 Mont. 187, 179 P.3d 1164
- State v. Makarchuk, 2009 MT 82, ¶ 37, 349 Mont. 507, 204 P.3d 1213

OPINION

PER CURIAM.

December 6 2011 DA 11-0278 IN THE SUPREME COURT OF THE STATE OF MONTANA
2011 MT 304N STATE OF MONTANA, Plaintiff and Appellee, v. PAUL D. LAMERE, Defendant
and Appellant. APPEAL FROM: District Court of the Thirteenth Judicial District, In and For the
County of Yellowstone, Cause No. DC 06-0695 Honorable Gregory R. Todd, Presiding Judge
COUNSEL OF RECORD: For Appellant: Paul Dewayne Lamere, self-represented; Deer Lodge,
Montana For Appellee: Steve Bullock, Montana Attorney General; Mark W. Mattioli, Appellate
Services Bureau Chief; Helena, Montana Scott Twito, Yellowstone County Attorney; Rod Souza,
Deputy County Attorney; Billings, Montana Submitted on Briefs: October 19, 2011 Decided:
December 6, 2011 Filed: _____ Clerk Justice Beth
Baker delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d), Montana
Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall
not be cited and does not serve as precedent.

Its case title, 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 Paul Dewayne Lamere
appeals the April 26, 2011 order of the Thirteenth Judicial District Court denying his motion for
credit for time served and denying his motion to amend the judgment by striking conditions of his
sentence for burglary.

We affirm. ¶3 Yellowstone County charged Lamere with Burglary and Attempted Sexual
Intercourse Without Consent in September 2006. Lamere was released on bond and required to
comply with electronic monitoring. In the meantime, Cascade County initiated proceedings to
revoke Lamere's suspended sentence from a 2003 theft conviction.

On July 19, 2007, the Eighth Judicial District Court revoked that sentence and sentenced him to five years, with three suspended. ¶4 Pursuant to a plea agreement, Lamere pleaded guilty to the Yellowstone County burglary charge in exchange for dismissal of the attempt charge. Lamere admitted to entering the home of an eighty-two-year-old woman with the purpose of sexually assaulting her.

In the plea agreement, Lamere agreed to complete Phase I of sex offender treatment. The agreement did not require Lamere to register as a sex offender under § 46-23-512, MCA. 2 ¶5 On April 15, 2009, the District Court sentenced Lamere to forty-five years in prison with ten years suspended. Adhering to the recommendation from Lamere's psychosexual evaluation, the District Court ordered Lamere be designated a Level II offender under § 46-23-509(3)(b), MCA.

Lamere appealed the designation to this Court on the ground that burglary is not a sexual offense under § 46-23-502(9)(a), MCA. In our Order of March 3, 2010, we remanded to the District Court "for the limited purpose of striking the sexual offender risk designation from Lamere's sentence." ¶6 In May 2010, Lamere moved to amend the judgment to include an additional 930 days' credit for time served on "home arrest." In February 2011, following the District Court's order striking Lamere's Level II sex offender designation, Lamere moved to strike nine additional provisions of the April 2009 judgment and sentence, including sex offender treatment and other limitations on his access to sexual materials.

Lamere filed another motion in March 2011, claiming credit for time served related to the Cascade County proceeding to revoke his probation on the theft conviction. ¶7 The District Court addressed Lamere's motions in its April 26, 2011 Order.

The court noted Lamere's successful appeal to the Montana Supreme Court resulted in striking the sexual offender designation and held he was barred from now seeking removal of additional conditions from the judgment. Regarding Lamere's motion for additional credit for time served, the District Court concluded Lamere was entitled to receive credit only for jail time served in connection with the Yellowstone County burglary charge.

3 ¶8 The District Court correctly observed Lamere failed to raise on direct appeal any issues regarding the conditions of his sentence. Moreover, Lamere agreed in his written plea agreement to complete sex offender treatment while incarcerated.

Finally, though the sexual offender risk designation was appropriately stricken from the sentence, the circumstances of the crime and the psychosexual evaluation indicate the additional conditions are appropriate. A district court may fashion sentence conditions which have either a nexus to the offense for which the offender is being sentenced, or to the offender himself.

State v. Ashby, 2008 MT 83, ¶ 15, 342 Mont. 187, 179 P.3d 1164. Here, there is a clear nexus between Lamere's burglary offense and the conditions imposed. Lamere's stated intention to

sexually assault an elderly woman merits the court's imposition of sex offender-related conditions. ¶9 We also reject Lamere's claim for additional credit against his prison sentence.

Home arrest is a component of a sentence already imposed, rather than a condition of pretrial release. Sections 46-18-1002, 46-18-203(7)(b), MCA. "'Home arrest' is a procedure for serving a suspended sentence and [the law] 'does not require that [the defendant] receive credit for the time he spent on formal house arrest as a condition of his pretrial release.'" State v. Makarchuk, 2009 MT 82, ¶ 37, 349 Mont.

507, 204 P.3d 1213. Although Lamere was subjected to electronic monitoring, he was not confined to his home and the monitoring occurred as a condition of his release on bond prior to sentencing. He was not entitled to credit for that time. 4 ¶10 The District Court credited Lamere with the time he served at the Yellowstone County Detention Facility from August 24, 2006, through September 5, 2006.

The court found Lamere's incarceration after that point was incurred in connection with the Eighth Judicial District Court's sentence and had to be addressed in that matter. Lamere offers no evidence from that proceeding or legal authority to support his claim for credit due to time spent in jail on the Cascade County offense and we conclude he has failed to meet his burden of proving error by the District Court. ¶11 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for noncitable memorandum opinions.

The issues in this case are legal and are controlled by settled Montana law, which the District Court correctly interpreted. ¶12 Affirmed. /S/ BETH BAKER We concur: /S/ MIKE McGRATH /S/ JAMES C. NELSON /S/ PATRICIA COTTER /S/ BRIAN MORRIS 5