

SUPREME COURT OF MONTANA

State v. Wells

21 P.3d 610 (Mont. 2001) · No. No. 00-099 · Decided April 5, 2001

SUMMARY

The Supreme Court of Montana affirmed the denial of Alannah Wells's petition for postconviction relief. The court held that her challenge to a weapons-enhancement sentence under the Montana Constitution's double-jeopardy provision was untimely and procedurally barred because it could have been raised on direct appeal. The court also declined to apply the miscarriage-of-justice exception because Wells did not present newly discovered evidence establishing actual innocence.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Jim Regnier; Karla M. Gray; Terry N. Triewelier; James C. Nelson; W. William Leaphart
JURISDICTION	Montana
DECIDED	April 5, 2001
DOCKET	No. 00-099
DISPOSITION	affirmed
PROCEDURAL POSTURE	Wells appealed the Eighth Judicial District Court's denial of her petition for postconviction relief challenging a weapon-enhancement portion of her sentence on double-jeopardy grounds.
STANDARD OF REVIEW	The court reviews the denial of postconviction relief to determine whether the district court's findings are clearly erroneous and whether it correctly interpreted the law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Alannah M. Wells v. State of Montana

TOPICS

- state post-conviction relief
- double jeopardy
- sentencing
- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether Wells's postconviction petition was timely under Montana's one-year postconviction-relief limitation period.
2. Whether the miscarriage-of-justice exception permitted review of Wells's untimely petition despite her failure to allege newly discovered evidence establishing actual innocence.
3. Whether Wells was procedurally barred from raising a double-jeopardy challenge in postconviction proceedings because the claim could have been raised on direct appeal.

HOLDINGS

1. Wells's petition was untimely because her conviction became final on March 3, 1998, and she did not file her petition until December 22, 1999, more than one year after finality.
2. The limitation period is jurisdictional and may be waived only for a clear miscarriage of justice; that exception did not apply because Wells did not allege newly discovered evidence establishing that she was actually innocent.
3. Wells was additionally barred from raising her double-jeopardy claim in postconviction proceedings because she could have raised it on direct appeal.

FACTUAL BACKGROUND

In 1997, Montana charged Alannah Wells with felony assault, and she pleaded guilty on December 18, 1997. The district court sentenced her to five years in prison, with two years suspended, plus an additional two-year sentence for use of a weapon during the offense. After the Montana Supreme Court decided *State v. Guillaume*, Wells sought postconviction relief, arguing that the weapon enhancement violated double jeopardy.

PROCEDURAL HISTORY

Wells pleaded guilty to felony assault in 1997 and received a prison sentence that included an additional two-year weapon enhancement. She did not appeal. She filed a postconviction petition in December 1999, which the district court sua sponte dismissed as procedurally barred. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *State v. Wilson*, 1999 MT 52, ¶ 11, 293 Mont. 429, 976 P.2d 962
- *State v. Guillaume*, 1999 MT 29, ¶ 16, 293 Mont. 224, 975 P.2d 312
- *State v. Nichols*, 1999 MT 212, ¶¶ 16, 20, 295 Mont. 489, 986 P.2d 1093
- *State v. Rosales*, 2000 MT 89, ¶ 7, 299 Mont. 226, 999 P.2d 313
- *In re Manula*, 263 Mont. 166, 169, 866 P.2d 1127, 1129 (1993)
- *Gollehon v. State*, 1999 MT 210, ¶ 55, 296 Mont. 6, 986 P.2d 395

- *Gollehon v. Montana*, 529 U.S. 1041, 120 S. Ct. 1539, 146 L. Ed. 2d 353 (2000)

OPINION

REGNIER, J.

21 P.3d 610 (2001) 2001 MT 55 STATE of Montana, Plaintiff and Respondent, v. Alannah M. WELLS, Defendant and Appellant. No. 00-099. Supreme Court of Montana. Submitted on Briefs December 14, 2000. Decided April 5, 2001. *611 Jeffrey T. Renz, Attorney at Law, Missoula, MT, for Appellant. Hon. Joseph P. Mazurek, Attorney General; Micheal S. Wellenstein, Assistant Attorney General, Helena, MT, Brant S. Light, Cascade County Attorney, Great Falls, MT, for Respondent.

Justice JIM REGNIER delivered the Opinion of the Court. ¶ 1 Alannah M. Wells appeals from an order entered by the Eighth Judicial District, Cascade County, denying her petition for postconviction relief. We affirm. BACKGROUND ¶ 2 In 1997 the State of Montana charged Alannah Wells with Felony Assault, § 45-5-202(2)(a), MCA (1997). Wells entered a plea of guilty on December 18, 1997.

On January 5, 1998, the District Court sentenced Wells to a five year prison sentence with two years suspended for the felony assault and also sentenced her to an additional two years for use of a weapon during the offense. Wells did not appeal her conviction or sentence. ¶ 3 Wells filed a petition for postconviction relief on December 22, 1999, contending that the enhancement of her sentence imposed for use of a weapon violated our recent decision in *State v. Guillaume*, 1999 MT 29, 293 Mont.

224, 975 P.2d 312. The District Court conducted its sua sponte review pursuant to § 46-21-201, MCA (1997), and entered an order dismissing the petition on December 29, 1999. The Court based its holding on *State v. Nichols*, 1999 MT 212, 295 Mont. 489, 986 P.2d 1093.

Because the court reviewed the case sua sponte, the State did not appear. Wells appeals. STANDARD OF REVIEW ¶ 4 We review a district court's denial of a petition for postconviction relief to determine whether its findings are clearly erroneous, and whether it correctly interpreted the law. *State v. Wilson*, 1999 MT 52, ¶ 11, 293 Mont. 429, ¶ 11, 976 P.2d 962, ¶ 11.

DISCUSSION ¶ 5 Did the District Court err in denying Wells' petition for postconviction relief? ¶ 6 Essentially, Wells argues that we should apply our holding in *Guillaume* retroactively *612 and vacate that portion of her sentence imposed for use of a weapon.

The State contends that Wells is procedurally barred from raising this issue. We agree. ¶ 7 In *Guillaume*, we held that the application of § 46-18-221, MCA (weapons enhancement statute) to a felony conviction, where the underlying offense requires proof of the use of a weapon, violates the double jeopardy provision of Article II, Section 25 of the Montana Constitution.

Guillaume, ¶ 16. In subsequently applying the holding of Guillaume, we concluded that we did not announce a rule so implicit in the concept of ordered liberty that it requires retroactive application to cases not pending on direct review and to cases that were final when our opinion was issued. Nichols, ¶ 16. Notwithstanding our pronouncement in Nichols, Wells urges us to apply our holding in Guillaume retroactively. ¶ 8 As a threshold matter, we must consider whether Wells' petition was timely filed.

Section 46-21-102(1), MCA, provides that a petition for postconviction relief may be filed at any time within one year of the date that the conviction become final. The District Court entered its written judgment and sentence on January 2, 1998.

The time for filing an appeal expired 60 days after January 2, 1998, which was March 3, 1998. See Rule 5(b), M.R.App.P. Therefore, Wells' conviction became final on March 3, 1998. See § 46-21-102(1)(a), MCA. It was incumbent on Wells to file her postconviction petition by March 3, 1999, in order to come within the one-year period for filing a postconviction petition.

Wells filed her petition for postconviction relief on December 22, 1999. ¶ 9 Wells argues that, although she failed to timely file her petition for postconviction relief, the one year limitation is not a jurisdictional limitation, but rather a statute of limitations and that she is entitled to an equitable tolling of the statute. A tolling, she argues, should be applied to the time period she was incarcerated in New Mexico and was without adequate legal assistance.

Wells points out that this argument was not addressed in the District Court and the matter should be remanded for a hearing on her argument. The State responds that the time limitation set forth in § 46-21-102, MCA, is jurisdictional and thus her petition is time barred. ¶ 10 We have previously held that the postconviction statute of limitations is a jurisdictional limit on litigation and is waived only when there is a clear miscarriage of justice, one so obvious that the judgment is rendered a complete nullity.

State v. Rosales, 2000 MT 89, ¶ 7, 299 Mont. 226, ¶ 7, 999 P.2d 313, ¶ 7. The miscarriage of justice exception is a narrow one and does not apply unless the defendant alleges newly discovered evidence that establishes that the defendant did not commit the offense. See, e.g., Rosales, ¶ 7 (citations omitted). ¶ 11 Wells does not present newly discovered evidence that shows she is actually innocent of the crime.

See Rosales, ¶ 7; Nichols, ¶ 20. We see no reason to revisit our decision in Rosales. Thus, we conclude that Wells' double jeopardy postconviction claim is time barred by § 46-21-102, MCA. ¶ 12 Wells' petition for postconviction relief is procedurally barred for another reason.

The postconviction statutes do not allow prisoners to raise matters that could have been raised on direct appeal. In *Re Manula* (1993), 263 Mont. 166, 169, 866 P.2d 1127, 1129. Wells could have raised her Guillaume double jeopardy claim on direct appeal.

Thus, she is additionally barred from raising the issue in a petition for postconviction relief. See § 46-21-105(2), MCA. See also *Gollehon v. State*, 1999 MT 210, ¶ 55, 296 Mont. 6, ¶ 55, 986 P.2d 395, ¶ 55, cert. denied sub nom. *Gollehon v. Montana* (2000), 529 U.S. 1041, 120 S.Ct. 1539, 146 L.Ed.2d 353. ¶ 13 Because Wells is procedurally barred from raising this postconviction claim, we decline to address any further issues. ¶ 14 Affirmed.

We concur: KARLA M. GRAY, TERRY N. TRIEWEILER, JAMES C. NELSON, W. WILLIAM LEAPHART.