

SUPREME COURT OF THE STATE OF MONTANA

State v. Ghostbear

2014 MT 192A (Supreme Court of the State of Montana 2014) · No. DA 13-0081 · Decided October 23, 2014

SUMMARY

The Montana Supreme Court reversed and remanded a district court decision limiting Edward Ghostbear’s sentence for felony sexual assault to the misdemeanor penalty. The Court held that the age-related requirements in Montana Code § 45-5-502(3) were elements of the specifically charged felony offense, not a separate sentence enhancement, and that the jury’s verdict necessarily included the required age findings. A specially concurring justice agreed that Apprendi was satisfied but concluded that Montana’s separate-finding statute was not satisfied and that the error was harmless.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Justice Patricia Cotter; Justice Michael E. Wheat; Justice Jim Rice; Justice Laurie McKinnon; Justice Beth Baker
JURISDICTION	Montana
DECIDED	October 23, 2014
DOCKET	DA 13-0081
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The State appealed the district court's post-trial ruling limiting Ghostbear's sentence to the misdemeanor penalty for sexual assault.
STANDARD OF REVIEW	Statutory interpretation is reviewed for correctness; factual findings are reviewed for clear error.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Montana v. Edward Harold Ghostbear

TOPICS

- sentencing
- criminal procedure
- statutory interpretation
- appellate procedure
- constitutional law

PRACTICE AREAS

- criminal law
- criminal procedure
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- statutory interpretation

QUESTIONS PRESENTED

1. Whether Montana's felony sexual-assault provision, § 45-5-502(3), MCA, was a sentence enhancement requiring a separate jury finding under § 46-1-401, MCA.
2. Whether the jury's instructions and guilty verdict necessarily established beyond a reasonable doubt that the victim was under sixteen and Ghostbear was at least three years older, permitting felony sentencing under *Appendi v. New Jersey*.

HOLDINGS

1. Because Ghostbear was specifically charged with felony sexual assault under § 45-5-502(3), MCA, the age-related facts were elements of the charged felony rather than a separate sentence enhancement under *Appendi* or § 46-1-401(3), MCA.
2. The jury's guilty verdict necessarily included findings that the victim was under fourteen and that Ghostbear was more than three years older, and thus established the age disparity required for felony sexual assault under § 45-5-502(3), MCA.

KEY QUOTATIONS

“other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.” (¶ 7)

“The District Court may therefore proceed to sentencing under § 45-5-502(3), MCA.” (¶ 16)

FACTUAL BACKGROUND

The State charged Edward Ghostbear with felony sexual assault involving his girlfriend's seven-year-old daughter. The jury acquitted him of felony sexual intercourse without consent but convicted him of felony sexual assault. After the verdict, Ghostbear sought sentencing under the misdemeanor provision, arguing that the jury had not separately found the victim's age and the age disparity required for the felony penalty. The record contained uncontroverted evidence that the victim was under sixteen and that Ghostbear was more than three years older.

PROCEDURAL HISTORY

The State charged Ghostbear with felony sexual intercourse without consent and, alternatively, felony sexual assault. A jury acquitted him of sexual intercourse without consent but convicted him of felony sexual assault. The district court ruled that the felony penalty could not be imposed because the jury had not made a specific finding regarding the ages of Ghostbear and the victim. The Montana Supreme Court reversed and remanded for sentencing under the felony provision.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was directed to proceed with sentencing under § 45-5-502(3), MCA, the felony sexual-assault provision.

CASES CITED

- *Apprendi v. New Jersey*, 530 U.S. 466 (2000)
- *Montana State Fund v. Simms*, 2012 MT 22, ¶ 15, 364 Mont. 14, 270 P.3d 64
- *Briese v. Mont. Pub. Emp. Ret. Bd.*, 2012 MT 192, ¶ 11, 366 Mont. 148, 285 P.3d 550
- *Olson v. Jude*, 2003 MT 186, ¶ 34, 316 Mont. 438, 73 P.3d 809
- *Brimstone Mining, Inc. v. Glaus*, 2003 MT 236, ¶ 20, 317 Mont. 236, 77 P.3d 175
- *Adams v. State*, 2007 MT 35, ¶ 52, 336 Mont. 63, 153 P.3d 601
- *State v. Scarborough*, 2000 MT 301, ¶ 47, 302 Mont. 350, 14 P.3d 1202
- *State v. Baker*, 2000 MT 235, 301 Mont. 323, 8 P.3d 817
- *Blakely v. Washington*, 542 U.S. 296 (2004)
- *Alleyne v. United States*, 570 U.S. 99 (2013)
- *Ring v. Arizona*, 536 U.S. 584 (2002)
- *State v. Williams*, 2010 MT 58, ¶¶ 24-27, 355 Mont. 354, 228 P.3d 1127
- *State v. Tichenor*, 2002 MT 311, ¶ 31, 313 Mont. 95, 60 P.3d 454
- *Gaustad v. City of Columbus*, 265 Mont. 379, 382, 877 P.2d 470, 472 (1994)
- *Sampson v. Natl. Farmers Union Prop. & Cas. Co.*, 2006 MT 241, ¶ 20, 333 Mont. 541, 144 P.3d 797
- *State v. Scheffer*, 2010 MT 73, ¶ 38, 355 Mont. 523, 230 P.3d 462
- *State v. Bahr*, 2009 MT 378, ¶ 9, 353 Mont. 294, 224 P.3d 610
- *State v. Rogers*, 2013 MT 221, ¶ 37, 371 Mont. 239, 306 P.3d 348
- *Washington v. Recuenco*, 548 U.S. 212 (2006)
- *Neder v. United States*, 527 U.S. 1 (1999)
- *State v. Stewart*, 2012 MT 317, ¶ 45, 367 Mont. 503, 291 P.3d 1187
- *State v. Matt*, 2008 MT 444, ¶¶ 31-32, 347 Mont. 530, 199 P.3d 244
- *State v. Charlie*, 2010 MT 195, ¶ 45, 357 Mont. 355, 239 P.3d 934
- *United States v. O'Brien*, 560 U.S. 218 (2010)
- *S. Union Co. v. United States*, 567 U.S. 343 (2012)
- *United States v. Zepeda-Martinez*, 470 F.3d 909, 913 (9th Cir. 2006)
- *State v. Sanchez*, 2008 MT 27, ¶ 57, 341 Mont. 240, 177 P.3d 444

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