

SUPREME COURT OF THE STATE OF MONTANA

State v. Spinks

2013 MT 150N (Supreme Court of the State of Montana 2013) · No. DA 12-0561 · Decided June 4, 2013

SUMMARY

The Montana Supreme Court affirmed the denial of Brian Joseph Spinks’s petition for post-conviction relief asserting double jeopardy violations. The court held that the petition was untimely, that the fundamental-miscarriage-of-justice exception did not apply, and that Spinks had failed to provide sufficient records to support his claim.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Patricia O. Cotter; Mike McGrath; Beth Baker; Brian Morris; Jim Rice
JURISDICTION	Montana
DECIDED	June 4, 2013
DOCKET	DA 12-0561
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a petition for post-conviction relief alleging a constitutional double-jeopardy violation.
STANDARD OF REVIEW	The Court reviewed whether the District Court erred in denying post-conviction relief; the opinion states that the District Court's factual findings were supported by substantial evidence and that the legal issues were controlled by settled Montana law.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Brian Joseph Spinks v. State of Montana

TOPICS

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

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether the District Court erred in denying Spinks's petition and motions for post-conviction relief as untimely.
2. Whether Spinks established an exception to or tolling of the post-conviction-relief statute of limitations based on a claimed fundamental miscarriage of justice and alleged victim recantation.
3. Whether the District Court could evaluate Spinks's double-jeopardy claim when he failed to provide information or records concerning the earlier Justice Court conviction.

HOLDINGS

1. The petition was time-barred because it was filed nearly nine years after the one-year limitations period for seeking post-conviction relief expired.
2. Spinks did not establish the fundamental-miscarriage-of-justice exception because that exception applies only when newly discovered evidence shows that the petitioner did not commit the offense, and the alleged victim recantation evidence was known to Spinks when he pleaded guilty.
3. The District Court properly denied relief because Spinks failed to comply with the requirements of § 46-21-104, MCA, and did not provide information or records concerning the earlier Justice Court conviction.

FACTUAL BACKGROUND

The State originally charged Spinks with two felony counts of sexual intercourse without consent based on conduct occurring July 3, 2000. Spinks later pleaded guilty to amended misdemeanor charges of partner or family member assault and negligent endangerment, receiving consecutive one-year sentences with all but time served suspended. He had previously pleaded guilty to partner or family member assault in Gallatin County Justice Court on July 5, 2000, and later claimed that the District Court conviction punished the same conduct twice. He did not raise double jeopardy during the original proceedings or pursue a direct appeal.

PROCEDURAL HISTORY

Spinks pleaded guilty in the Montana Eighteenth Judicial District Court to amended misdemeanor charges and was sentenced on May 30, 2001. Nearly nine years after the applicable post-conviction-relief limitations period expired, he filed motions asserting that the conviction violated double-jeopardy protections. The District Court denied the motions as untimely and for failure to provide information or records concerning an earlier Justice Court conviction. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Davis v. State, 2004 MT 112, ¶ 15, 321 Mont. 118, 88 P.3d 1285
- State v. Evert, 2007 MT 30, ¶ 16, 336 Mont. 36, 152 P.3d 713

OPINION

PER CURIAM.

June 4 2013 DA 12-0561 IN THE SUPREME COURT OF THE STATE OF MONTANA 2013 MT 150N STATE OF MONTANA, Plaintiff and Appellee, v. BRIAN JOSEPH SPINKS, Defendant and Appellant. APPEAL FROM: District Court of the Eighteenth Judicial District, In and For the County of Gallatin, Cause No. DC-00-235 Honorable Holly Brown, Presiding Judge COUNSEL OF RECORD: For Appellant: Brian Joseph Spinks (Self-Represented), Great Falls, Montana For Appellee: Timothy C. Fox, Montana Attorney General, C. Mark Fowler, Assistant Attorney General, Helena, Montana Marty Lambert, Gallatin County Attorney, Todd Whipple, Deputy County Attorney, Bozeman, Montana Submitted on Briefs: April 17, 2013 Decided: June 4, 2013 Filed: _____ Clerk Justice Patricia O. Cotter 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 Brian Joseph Spinks (Spinks) appeals from an order of Montana's Eighteenth Judicial District Court, Gallatin County, denying his petition for postconviction relief.

On December 14, 2000, the State charged Spinks with two felony counts of sexual intercourse without consent in violation of § 45-5-503, MCA. The conduct forming the basis of the charges occurred on July 3, 2000. On May 1, 2001, Spinks pled guilty to amended misdemeanor charges of partner or family member assault and negligent endangerment.

The District Court sentenced Spinks to one year in the custody of the Gallatin County Detention Center for each offense to run consecutively, and suspended all but the 116 days Spinks had already served for each offense.

The District Court entered the sentence and judgment on May 30, 2001. ¶3 Spinks had previously pled guilty to partner or family member assault in Gallatin County Justice Court on July 5, 2000. Spinks alleges that his District Court sentence represents the second time that he was charged and sentenced for his conduct on July 3, 2000.

On February 8, 2011, Spinks filed a letter with the District Court asserting that his conviction in District Court violated his constitutional double jeopardy rights. On March 8, 2011, Spinks filed a "Motion to Expunge or Retrial Due to Double Jeopardy 2 Conviction" in which he set forth his double jeopardy claim.

The District Court noted that Spinks never raised any double jeopardy concerns during any earlier proceedings and did not appeal his conviction. On May 2, 2011, the District Court denied Spinks'

motion as untimely pursuant to M. R. App. P. 5(b)(i) and § 46-21-102(1), MCA. ¶4 On May 8, 2012, and July 16, 2012, Spinks filed additional motions for postconviction relief due to double jeopardy considerations.

Once again, the District Court denied Spinks' motions as untimely. Spinks appeals the District Court's decision. We address the following issue on appeal: ¶5 Did the District Court err in denying Spinks' petition for postconviction relief? ¶6 The District Court entered its sentence and judgment against Spinks on May 30, 2001.

The judgment became final 60 days later when Spinks' time to file a direct appeal lapsed. M. R. App. P. 5(b)(i). The statute of limitations for filing a petition for postconviction relief expired one year after the conviction became final pursuant to § 46-21-102(1), MCA. See e.g. Davis v. State, 2004 MT 112, ¶ 15, 321 Mont. 118, 88 P.3d 1285.

We agree with the District Court's conclusion that Spinks' petition for postconviction relief and double jeopardy arguments raised for the first time nearly nine years after the expiration of the applicable statute of limitations was time-barred. ¶7 Spinks asserts that denial of his petition for postconviction relief would constitute a fundamental miscarriage of justice.

However, the fundamental miscarriage of justice exception applies only to claims in which the petitioner alleges that newly discovered evidence establishes that he did not commit the offense. See State v. Evert, 2007 MT 30, ¶ 16, 336 Mont. 36, 152 P.3d 713; § 46-21-102(2), MCA. Spinks contends that the 3 victim recanted, but relies on evidence that was known to him at the time he pled guilty to the offenses.

Therefore, Spinks cannot satisfy the fundamental miscarriage of justice exception. Spinks has failed to establish that any other exceptions or tolling apply to his petition. ¶8 Notwithstanding the multiple procedural bars present in this case, Spinks has failed to comply with the requirements of § 46-21-104, MCA. Spinks did not provide the District Court with any information or records pertaining to his earlier conviction in Justice Court.

Even if it was determined to reach the merits, the District Court did not have sufficient evidence to evaluate the validity of Spinks' double jeopardy claims. Accordingly, the District Court did not err in denying Spinks' petition for postconviction relief. ¶9 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 District Court's factual findings are supported by substantial evidence and the legal issues in this case are controlled by settled Montana law, which the District Court correctly interpreted. /S/ PATRICIA COTTER We Concur: /S/ MIKE McGRATH /S/ BETH BAKER /S/ BRIAN MORRIS /S/ JIM RICE 4

