

SUPREME COURT OF MONTANA

State v. Fishell

2004 MT 182N (Mont. 2004) · No. No. 04-075 · Decided July 13, 2004

SUMMARY

The Montana Supreme Court affirmed the denial of Rosita Iva Fishell’s motion to amend her sentence following revocation of probation. The court declined to consider her bond-hearing argument because it was raised for the first time on appeal. It held that the district court acted within its statutory discretion in granting credit for 58 days of jail time while denying credit for time served on probation.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	James C. Nelson; Karla M. Gray; John Warner; Patricia O. Cotter; Jim Rice
JURISDICTION	Montana
DECIDED	July 13, 2004
DOCKET	No. 04-075
DISPOSITION	affirmed
PROCEDURAL POSTURE	Fishell appealed the Missoula County District Court's denial of her motion for a bond hearing and motion to amend her sentence after revocation of probation.
STANDARD OF REVIEW	The denial of a motion to amend a sentence is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Nonprecedential; expressly designated noncitable
PARTIES	Rosita Iva Fishell v. State of Montana

TOPICS

- sentence modification
- probation
- sentencing
- preservation of error
- appellate procedure

PRACTICE AREAS

- criminal procedure
- sentencing
- probation
- appellate procedure

QUESTIONS PRESENTED

1. Whether Fishell preserved for appellate review her argument that she was denied a bond hearing within the time required by statute.
2. Whether the District Court abused its discretion by denying her motion to amend the sentence and by declining to credit elapsed probation time against her sentence.

HOLDINGS

1. The Montana Supreme Court declined to review Fishell's argument that she was denied a timely bond hearing because she raised it for the first time on appeal.
2. The District Court did not abuse its discretion in granting credit for 58 days of jail time while declining to credit time spent on probation against Fishell's sentence.

KEY QUOTATIONS

“If a suspended sentence . . . is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as credit against the sentence or reject all or part of the time as a credit.” (¶ 23)

“We have repeatedly held that we will not consider issues raised for the first time on appeal, as a district court cannot be faulted for something which it never had opportunity to decide.” (¶ 19)

FACTUAL BACKGROUND

Fishell pleaded guilty in July 2000 to two felony drug offenses and two misdemeanors and received suspended concurrent sentences. After violating probation through new criminal offenses, the Missoula County District Court revoked probation and imposed concurrent five-year prison sentences. The court credited her with 58 days of jail time but denied credit for time spent on probation. She later sought a bond hearing and amendment of the sentence.

PROCEDURAL HISTORY

Fishell pleaded guilty to two felony drug offenses and two misdemeanors in 2000 and received suspended sentences. After she violated probation, the District Court revoked probation and imposed concurrent five-year prison sentences, granting credit for 58 days of jail time but denying credit for elapsed probation time. The Sentence Review Division declined to modify the sentence. Fishell then moved pro se in the District Court to amend the judgment; the motion was denied, and she appealed. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Marriage of Gerhart, 2003 MT 292, ¶ 31, 318 Mont. 94, 78 P.3d 1219
- Kills on Top v. State, 279 Mont. 384, 390, 928 P.2d 182, 186 (1996)