

SUPREME COURT OF THE STATE OF MONTANA

Swan Delavergn Smith v. State of Montana

2007 MT 88N (Supreme Court of the State of Montana 2007) · No. DA 06-0504 · Decided April 3, 2007

SUMMARY

The Montana Supreme Court affirmed the denial of Swan Delavergn Smith’s petition for post-conviction relief. The court held that Smith’s challenge to Montana’s prohibition on using intoxication to contest mental state was procedurally barred because it could have been raised on direct appeal and was not properly preserved in the trial court.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	W. William Leaphart; Brian Morris; John Warner; Patricia Cotter; James C. Nelson
JURISDICTION	Montana
DECIDED	April 3, 2007
DOCKET	DA 06-0504
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a petition for postconviction relief.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Swan Delavergn Smith v. State of Montana

TOPICS

- state post-conviction relief
- post-conviction relief
- preservation of error
- appellate procedure
- constitutional law

PRACTICE AREAS

- criminal law
- postconviction litigation
- criminal procedure
- constitutional law

QUESTIONS PRESENTED

1. Whether Smith's Montana constitutional challenge to Montana Code § 45-2-203 was procedurally barred because it could have been raised on direct appeal.

2. Whether Smith's general trial-court assertion that the statute violated due process and inhibited his right to present a defense preserved a challenge under Article II, Sections 3, 4, and 24 of the Montana Constitution.

HOLDINGS

1. Montana Code § 46-21-105(2) bars postconviction review of claims that could have been raised on direct appeal, including issues that were not properly preserved at the trial level.
2. A vague statement that a statute violated due process because it inhibited the defendant's right to present a defense did not specifically preserve claims under Article II, Sections 3 and 4 of the Montana Constitution.

KEY QUOTATIONS

“Claims that could have been raised on direct appeal are barred from review under a petition for postconviction relief.” (¶7)

“It is manifest on the face of the briefs and the record before us that the appeal is procedurally barred pursuant to § 46-21-105(2), MCA.” (¶10)

FACTUAL BACKGROUND

Swan Smith was convicted of deliberate homicide and sentenced to life imprisonment. The underlying offense involved Smith beating the victim to death while intoxicated. In postconviction proceedings, Smith challenged Montana Code § 45-2-203, which prohibits reliance on intoxication concerning mental state, asserting for the first time that it violated Montana constitutional protections concerning the right to present a defense.

PROCEDURAL HISTORY

Smith was convicted of deliberate homicide and sentenced to life imprisonment, and the Montana Supreme Court affirmed the conviction on direct appeal. He later sought postconviction relief, arguing for the first time that Montana's statutory limitation on the intoxication defense violated his right to present a defense under the Montana Constitution. The District Court denied relief under the statutory procedural bar for claims that could have been raised on direct appeal, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Smith, 2005 MT 325, 329 Mont. 526, 127 P.3d 353
- Montana v. Egelhoff, 518 U.S. 37, 116 S. Ct. 2013 (1996)
- State v. Baker, 272 Mont. 273, 281, 901 P.2d 54, 58 (1995)

OPINION

PER CURIAM.

No. DA 06-0504 IN THE SUPREME COURT OF THE STATE OF MONTANA 2007 MT 88N
SWAN DELAVERGN SMITH, Petitioner and Appellant, v. STATE OF MONTANA, Respondent
and Respondent. APPEAL FROM: The District Court of the Twentieth Judicial District, In and For
the County of Lake, Cause No. DC-03-55, Honorable C. B. McNeil, Presiding Judge COUNSEL
OF RECORD: For Appellant: Palmer A. Hoovestall, Hoovestall Law Firm, PLLC, Helena, Montana
For Respondent: Honorable Mike McGrath, Attorney General; Ilka Becker, Assistant Attorney
General, Helena, Montana Robert Long, County Attorney; Mitchell A. Young, Deputy County
Attorney, Polson, Montana Submitted on Briefs: March 14, 2007 Decided: April 3, 2007 Filed:

Clerk Justice W. William Leaphart delivered
the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court 1996
Internal Operating Rules, as amended in 2003, the following memorandum decision shall not be
cited as precedent.

It shall be filed as a public document with the Clerk of the Supreme Court and its case title,
Supreme Court 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 Swan Smith was
convicted of deliberate homicide and sentenced to life imprisonment.

We affirmed his conviction on direct appeal. The underlying facts are set forth in State v. Smith,
2005 MT 325, 329 Mont. 526, 127 P.3d 353, and we will not repeat them here, except to note that
Smith was intoxicated at the time he beat the victim to death. ¶3 Smith's current appeal is from the
District Court's denial of his petition for postconviction relief.

The District Court reasoned that the claim raised in Smith's petition is procedurally barred by §
46-21-105(2), MCA, as a claim that could have been raised on direct appeal. ¶4 In his petition,
Smith argued that § 45-2-203, MCA, which prohibits the defense of intoxication concerning
mental state, violates his right to defend guaranteed by Sections 3, 4 and 24 of Article II of the
Montana Constitution.

During trial and on appeal, however, Smith contended that the statute violated the federal due
process and supremacy clauses. We affirmed, noting that the United States Supreme Court had
already decided 2 this issue in Montana v. Egelhoff, 518 U.S. 37, 116 S. Ct. 2013 (1996). Smith,
¶¶ 29-33.

In a concurrence, Justice Nelson, joined by Justice Cotter, stated that: "[a]t such point in time as
there are two other votes to reconsider this issue, I stand ready to overrule McCaslin and proceed
in accordance with our decision in [Egelhoff], but on independent state grounds." Smith, ¶ 35. ¶5
In his petition for rehearing, Smith, for the first time, alleged that this Court overlooked whether §
45-2-203, MCA, violates his right to present a defense under the Montana Constitution.

We denied Smith's petition, noting that he was seeking relief under the Montana Constitution for the first time on appeal. ¶6 Smith now argues that he has preserved his Montana Constitution argument for consideration by way of postconviction proceedings.

First, he contends that the broad statement in his trial brief, that the statute "violates due process because it inhibits Swan Smith's right to present a defense," encompassed both federal and state constitutional provisions relating to the right to present a defense.

Second, he asserts that his current argument could not have been raised on appeal because it was not preserved below. Finally, Smith argues that the first time he could have reasonably raised the argument under the Montana Constitution was after Justice Nelson, in his Smith concurrence, opened the door by indicating he was willing to reverse McCaslin on independent state grounds. ¶7 Claims that could have been raised on direct appeal are barred from review under a petition for postconviction relief.

Section 46-21-105(2), MCA. This procedural bar 3 also applies to issues that were not properly preserved for appeal at the trial level. *State v. Baker*, 272 Mont. 273, 281, 901 P.2d 54, 58 (1995) (citations omitted). ¶8 Smith's vague general statement made in his trial brief that § 45-2-203, MCA, "violates due process because it inhibits Swan Smith's right to present a defense," failed to specifically reference Article II, Sections 3 and 4 of the Montana Constitution.

The statement, at best, informed the court that Smith was arguing that the statute violates "due process." Additionally, failure to preserve the issue below does not allow Smith to end run the procedural bar described in § 46-21-105(2), MCA.

As stated above, the procedural bar applies not only to issues that should have been raised on appeal but also to issues that were not properly preserved for appeal in the district court. See *Baker*, 272 Mont. at 281, 901 P.2d at 58.

The very fact that Smith failed to raise his Montana Constitution argument below thus bars the issue from consideration under postconviction relief. ¶9 Lastly, we conclude that Smith did not have to wait for Justice Nelson's concurrence to open the door to Smith's current argument that § 45-2-203, MCA, violates his right to defend under the Montana Constitution, because the constitutional provisions Smith is relying upon were adopted in 1972.

We therefore agree with the District Court that, independently of Justice Nelson's special concurrence, Smith could have challenged the statute below because he "either knew or should have known of [the Montana Constitution] provisions now argued for the first time in postconviction relief." 4 ¶10 It is appropriate to decide this case pursuant to our Order of February 11, 2003, amending Section 1.3 of our 1996 Internal Operating Rules and providing for memorandum opinions.

It is manifest on the face of the briefs and the record before us that the appeal is procedurally barred pursuant to § 46-21-105(2), MCA. ¶11 We affirm the judgment of the District Court. /S/ W. WILLIAM LEAPHART We concur: /S/ BRIAN MORRIS /S/ JOHN WARNER /S/ PATRICIA COTTER /S/ JAMES C. NELSON 5