

SUPREME COURT OF MONTANA

State v. MacGregor

2013 MT 297 (2013) · No. DA 11-0498 · Decided November 26, 2013

SUMMARY

The Supreme Court of Montana issued an order amending paragraphs 24 and 50 of its opinion in State v. MacGregor after denying the defendant's petition for rehearing. The amendments addressed standby counsel and ineffective-assistance claims, as well as the defendant's contention that the jury should have considered mitigated deliberate homicide.

CASE DETAILS

COURT	Supreme Court of Montana
JURISDICTION	Montana
DECIDED	November 26, 2013
DOCKET	DA 11-0498
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed his criminal conviction and related rulings from the First Judicial District Court. After the Supreme Court affirmed in an October 15, 2013 opinion, the defendant petitioned for rehearing; the court denied rehearing but amended two paragraphs of its opinion and issued an amended opinion.
PRECEDENTIAL VALUE	published
PARTIES	Jeremy Steven MacGregor v. State of Montana

TOPICS

- right to counsel
- ineffective assistance
- sixth amendment
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal procedure
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether actions or inaction by standby counsel could establish a violation of the Sixth Amendment right to effective assistance of counsel.

2. Whether the district court erred by failing to conduct additional inquiry into MacGregor's complaints about representation while his request to represent himself was pending.
3. Whether MacGregor presented sufficient evidence of direct provocation or another mitigating factor to support submission of mitigated deliberate homicide to the jury.

HOLDINGS

1. Standby counsel does not constitute counsel for Sixth Amendment purposes and therefore cannot be the basis for a claim that counsel violated the right to effective assistance.
2. The district court did not err by failing to conduct additional inquiry into MacGregor's complaint concerning representation.
3. MacGregor did not establish a mitigating factor sufficient to support consideration of mitigated deliberate homicide because the circumstances he identified reflected accumulated stress, anger, and intoxication rather than direct provocation.

KEY QUOTATIONS

“Standby counsel does not constitute counsel for Sixth Amendment purposes.” (¶ 24)

“But mitigating factors arise from some sort of direct provocation, not simply the buildup of stress and anger.” (¶ 50)

FACTUAL BACKGROUND

MacGregor was evaluated for competency while he had requested permission to represent himself, and counsel was designated standby counsel during that period. He alleged that counsel failed to develop a strategy or contact him while he was hospitalized at the Montana State Hospital. He also argued that the jury should have been allowed to consider mitigated deliberate homicide based on intoxication, stress, family circumstances, employment difficulties, and other personal pressures, but the amended opinion states that he presented no evidence of direct provocation or corroboration of involuntary intoxication.

PROCEDURAL HISTORY

The First Judicial District Court entered the underlying decision against MacGregor. The Supreme Court of Montana issued an opinion affirming that decision on October 15, 2013. MacGregor filed a petition for rehearing, which the court denied, while ordering minor amendments concerning ineffective assistance and mitigation.

DISPOSITION

affirmed

CASES CITED

- Halley v. State, 2008 MT 193, ¶ 22, 344 Mont. 37, 186 P.3d 859
- United States v. Taylor, 933 F.2d 307, 313 (5th Cir. 1991)

- Hans v. State, 283 Mont. 379, 399, 942 P.2d 674, 686 (1997)
- State v. Goulet, 283 Mont. 38, 42, 938 P.2d 1330, 1333 (1997)
- State v. Martin, 2001 MT 83, ¶¶ 33-34, 305 Mont. 123, 23 P.3d 216

OPINION

State v. MacGregor 2013 MT 297

PER CURIAM.

November 26 2013

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 11-0498 _____

STATE OF MONTANA,

Plaintiff and Appellee, v. ORDER

JEREMY STEVEN MACGREGOR,

Defendant and Appellant. _____ On October 15, 2013, we issued an Opinion in the above-entitled action affirming the decision of the First Judicial District Court. Appellant Jeremy Steven MacGregor (MacGregor) filed a Petition for Rehearing with this Court on November 8, 2013. While we denied the Petition for Rehearing, we determined to make minor changes to this Court's Opinion. The changes to the Opinion set forth below are reflected in the attached Amended Opinion. Accordingly, IT IS ORDERED that paragraphs 24 and 50 of the Opinion in this matter are AMENDED as follows. Strikeouts are deleted and underlined language is added: ¶24 MacGregor complains that his attorney failed to form a strategy or contact him while he was at the Montana State Hospital. But these complaints concerned his attorney's activity after he had been designated "standby counsel." Standby counsel does not constitute counsel for Sixth Amendment purposes. Halley v. State, 2008 MT 193, ¶ 22, 344 Mont. 37, 186 P.3d 859 (quoting United States v. Taylor, 933 F.2d 307, 313 (5th Cir. 1991)). Because standby counsel does not fulfill the Sixth Amendment right to effective counsel, MacGregor cannot claim that standby counsel's action or inaction violated his right to effective assistance. At the time the trial court ordered the competency evaluation, MacGregor already had requested to represent himself. The court deferred decision on MacGregor's request until the evaluation was completed. MacGregor later complained that "representation was forced upon him during the state's mental evaluation," while simultaneously criticizing Scott for failing to contact MacGregor while he was hospitalized. Given the District Court's familiarity with 1 MacGregor's requests and its decision to postpone ruling on MacGregor's motion to represent himself, it did not err in failing to conduct additional inquiry into his complaint. ¶50 MacGregor contends that the incorrect instruction prevented the jury from considering mitigated deliberate homicide as a charge, and this constitutes a miscarriage of justice. MacGregor alleges mitigation because he was intoxicated on marijuana and alcohol; he was upset about an incident where his dog knocked over his child; his child had been diagnosed with a minor ailment; he had fired someone recently; he had quit cigarettes, marijuana, and alcohol (although

not that day); he had worked 60-hour work weeks; he had cut his hand; and his wife forgot their anniversary. But mitigating factors arise from some sort of direct provocation, not simply the buildup of stress and anger. *Hans v. State*, 283 Mont. 379, 399, 942 P.2d 674, 686 (1997). We have previously ruled that extreme intoxication does not constitute a mitigating factor, nor do the stresses that accompany living in hard times. *State v. Goulet*, 283 Mont. 38, 42, 938 P.2d 1330, 1333 (1997) (showing of intoxication or anger insufficient to support mitigation); *State v. Martin*, 2001 MT 83, ¶¶ 33-34,

305 Mont. 123, 23 P.3d 216 (unemployment, homelessness, pregnant girlfriend do not support mitigation). MacGregor presented no evidence demonstrating provocation of his anger other than the challenges that naturally accompany sobriety, fatherhood, and marriage. Nor did any of MacGregor's witnesses corroborate his involuntary intoxication defense. IT IS FURTHER ORDERED that this Court's October 15, 2013 Opinion in this matter is amended as set forth above. An Amended Opinion is issued herewith. The Clerk is directed to provide copies of this Order to all counsel of record. DATED this ____ day of November, 2013.

____ Chief Justice 2