

SUPREME COURT OF MONTANA

State v. Brandon Burns

2012 MT 42N · No. DA 11-0574 · Decided February 21, 2012

SUMMARY

The Montana Supreme Court affirmed the denial of Brandon Burns’s petition for remission of allegedly illegally ordered restitution. The Court held that Burns’s claims were barred by res judicata and were time-barred, and that he was not entitled to an evidentiary hearing because he challenged the legality of the restitution order rather than alleging changed circumstances warranting modification or waiver. The memorandum opinion is noncitable under the court’s internal operating rules.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Beth Baker; Beth Baker; Mike McGrath; Patricia Cotter; Michael E. Wheat; Jim Rice
JURISDICTION	Montana
DECIDED	February 21, 2012
DOCKET	DA 11-0574
DISPOSITION	affirmed
PROCEDURAL POSTURE	Burns appealed the Yellowstone County District Court's denial of his Petition for Remission of Illegally Ordered Restitution. The Montana Supreme Court affirmed.
STANDARD OF REVIEW	Postconviction rulings are reviewed for clearly erroneous findings of fact and correctness of conclusions of law; discretionary rulings concerning whether to hold an evidentiary hearing are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion
PARTIES	Brandon Burns v. State of Montana

TOPICS

[post-conviction relief](#)[restitution criminal](#)[habeas corpus](#)[appellate procedure](#)[remedies](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court erred by denying Burns's petition for remission of allegedly illegal restitution without holding a hearing under section 46-18-246, MCA.
2. Whether Burns could relitigate the legality of the restitution order after having previously raised substantially the same contentions in habeas proceedings.
3. Whether Burns's failure to allege changed circumstances entitled him to a hearing for modification or waiver of restitution.

HOLDINGS

1. Burns's challenge to the legality of the restitution order was barred by res judicata because he had multiple prior opportunities to litigate the same contentions before the Montana Supreme Court.
2. Burns was not entitled to a hearing because he challenged only the legality of the restitution order and did not allege changed circumstances supporting modification or waiver.
3. Burns could not raise new arguments for modification of restitution for the first time in his reply brief.

KEY QUOTATIONS

“Central to res judicata is the concept of finality; litigation must, at some point, come to an end.” (¶ 7)

FACTUAL BACKGROUND

Burns pleaded guilty to sexual intercourse without consent and was sentenced in 2000 with an order to pay \$3,455.88 in restitution to the Crime Victim Compensation Account. He later challenged the legality of the restitution order, including the seizure of gift money and the absence of statutory documentation and a payment schedule. His petition for remission also asserted that the district court should have held a hearing under section 46-18-246, MCA, although he did not allege changed circumstances warranting modification or waiver.

PROCEDURAL HISTORY

Burns pleaded guilty to sexual intercourse without consent in 2000 and received a sentence including restitution of \$3,455.88. After pursuing unsuccessful habeas and restitution-related challenges in the Montana Supreme Court, he filed a district-court petition alleging that the restitution order was illegal and that he was entitled to a hearing under section 46-18-246, MCA. The district court denied the petition as barred by the post-conviction statute of limitations and waiver, and the Supreme Court affirmed on res judicata and failure to allege changed circumstances.

DISPOSITION

affirmed

CASES CITED

- State v. Evert, 2007 MT 30, ¶ 12, 336 Mont. 36, 152 P.3d 713
- Touris v. Flathead Co., 2011 MT 165, ¶ 12, 361 Mont. 172, 258 P.3d 1
- State v. Payne, 2011 MT 35, ¶ 39, 359 Mont. 270, 248 P.3d 842

OPINION

PER CURIAM.

February 21 2012 DA 11-0574 IN THE SUPREME COURT OF THE STATE OF MONTANA
2012 MT 42N STATE OF MONTANA, Plaintiff and Appellee, v. BRANDON BURNS, Defendant
and Appellant. APPEAL FROM: District Court of the Thirteenth Judicial District, In and For the
County of Yellowstone, Cause No. DC 99-0351 Honorable Gregory R. Todd, Presiding Judge
COUNSEL OF RECORD: For Appellant: Brandon James Burns, (self-represented); Deer Lodge,
Montana For Appellee: Steve Bullock, Montana Attorney General; Sheri K. Sprigg, Assistant
Attorney General; Helena, Montana Scott Twito, Yellowstone County Attorney; Rodney E. Souza,
Deputy County Attorney; Billings, Montana Submitted on Briefs: February 1, 2012 Decided:
February 21, 2012 Filed: _____ Clerk Justice Beth
Baker 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 Brandon Burns
appeals the Thirteenth Judicial District Court's order denying his Petition for Remission of
Illegally Ordered Restitution. Burns entered a plea of guilty to a charge of Sexual Intercourse
Without Consent on April 28, 2000, and was sentenced on October 10, 2000.

Burns's sentence included restitution in the amount of \$3,455.88 to be paid to the Crime Victim
Compensation Account. ¶3 Burns did nothing to challenge the restitution order until he filed a
Petition for Writ of Habeas Corpus with this Court on July 8, 2011.

In our August 16, 2011 order, we denied his petition and determined Burns's restitution obligation
continued until paid in full, even though the sentence that gave rise to the restitution was
discharged. ¶4 Burns then filed a Petition for Remission of Illegally Ordered Restitution in the
District Court. Burns argued the 1995 statute regarding restitution (the statute applicable to his
sentence) did not allow a gift to him to be seized for restitution.

The District Court found that Burns's petition had made no specific allegation as to what gift was
seized. Burns also alleged that there was no payment schedule set forth for restitution. Contrary to
this assertion, the court noted Condition 17 of its January 2001 Nunc Pro Tunc Judgment provided
he pay monthly amounts, with payments to be supervised and regulated by the Probation and
Parole officer.

Burns further argued the pre-sentence report did not meet the requirements of § 46-18-242, MCA (1995), mandating documentation of the victim's loss, the offender's assets, and the offender's future 2 ability to pay restitution.

The District Court denied Burns's petition on August 19, 2011, concluding, "Burns sat on his rights for many years" and has "waived any objection to any statutory deficiency" regarding restitution. The court held § 46-21-102, MCA (1995), barred Burns's claim because his petition for postconviction relief needed to be filed by January 3, 2006, to comply with the five-year limitation. ¶5 Burns then sought another writ of habeas corpus from this Court.

In that petition, he alleged the restitution order did not meet statutory requisites, and that it was unlawful for the prison to seize gift money in order to satisfy a restitution obligation. He also alleged the District Court erred in not holding a hearing under § 46-18-246, MCA.

We issued an order on November 22, 2011, determining that relief was not available to Burns under § 46-18-246, MCA, because he was not seeking an adjustment or waiver of a presumptively valid restitution order. Instead, he was challenging the restitution as illegal.

Moreover, we agreed with the State that similar arguments were rejected in the denial of Burns's previous petition and the petition was time-barred. ¶6 Burns timely appealed the District Court's denial of his petition for remission, arguing that the court erred in not granting him a hearing under § 46-18-246, MCA, to address his contentions.

We review a district court's postconviction rulings to determine whether the district court's findings of fact are clearly erroneous and whether its conclusions of law are correct. *State v. Evert*, 2007 MT 30, ¶ 12, 336 Mont. 36, 152 P.3d 713.

We review a court's discretionary rulings, such as whether to hold an evidentiary hearing, for an abuse of discretion. *Evert*, ¶ 12. ¶7 The District Court correctly applied the law in denying Burns's petition. Burns's claim is barred by principles of res judicata because he already had multiple opportunities to litigate 3 before this Court the same contentions about the illegality of the restitution order.

Touris v. Flathead Co., 2011 MT 165, ¶ 12, 361 Mont. 172, 258 P.3d 1. "Central to res judicata is the concept of finality; litigation must, at some point, come to an end." *Touris*, ¶ 12. This Court previously determined that relief is not available under § 46-18-246, MCA, that the petition is time-barred and that seizing a gift to satisfy a restitution obligation is not illegal.

Burns cannot re-litigate these issues. ¶8 Further, Burns's assertion that he was entitled to a hearing under § 46-18-246, MCA, fails because he did not allege changed circumstances. Burns only contested the legality of the restitution in his petition to the District Court.

The court did not need to hold a hearing, and therefore did not abuse its discretion in denying one, because Burns did not make any arguments in his petition about changed circumstances meriting waiver or modification of the restitution order.

In his reply brief, Burns first raises arguments for modification of restitution. However, those arguments were not raised in his petition for remission and “[w]e will not put a district court in error for failing to address an issue or an argument that was not made before it.” *State v. Payne*, 2011 MT 35, ¶ 39, 359 Mont. 270, 248 P.3d 842. Burns cannot raise new arguments in his reply brief. ¶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 issues in this case are legal and are controlled by settled Montana law, which the District Court correctly interpreted. The District Court’s order of August 19, 2011, is affirmed. /S/ BETH BAKER 4 We concur: /S/ MIKE McGRATH /S/ PATRICIA COTTER /S/ MICHAEL E WHEAT /S/ JIM RICE 5