

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PRECEDENTIAL VALUE	Nonprecedential memorandum opinion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

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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

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