

SUPREME COURT OF MONTANA

State v. Parks

2015 MT 32N (2015) · No. DA 14-0047 · Decided February 3, 2015

SUMMARY

The Montana Supreme Court affirmed the resentencing of Terry D. Parks on a single securities-fraud conviction after a prior appeal vacated two convictions and remanded for resentencing. The Court held that issues concerning the offense's mental-state requirement, ineffective assistance of counsel, and the legality of the felony sentence were outside the scope of the prior remand and could not be raised in the resentencing appeal, though some issues could be pursued in post-conviction proceedings.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Jim Rice; Jim Rice; Mike McGrath; James Jeremiah Shea; Michael E. Wheat; Patricia Cotter
JURISDICTION	Montana
DECIDED	February 3, 2015
DOCKET	DA 14-0047
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from the District Court of the Fourth Judicial District's rejection of Parks's arguments on remand and resentencing on one securities-fraud conviction.
STANDARD OF REVIEW	The court reviewed whether the District Court complied with the mandate and result contemplated by the prior appellate decision; it stated that the remand proceedings correctly interpreted settled Montana law.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Terry D. Parks v. State of Montana

TOPICS

- appellate procedure
- criminal procedure
- post-conviction relief
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court complied with the mandate in Parks I by resentencing Parks on the single affirmed felony conviction.
2. Whether Parks could raise on remand or in the present appeal new arguments that the securities-fraud offense was an absolute-liability offense, that the State failed to prove a required mental state, or that the sentence was limited to a fine of no more than \$500.
3. Whether Parks could raise ineffective-assistance claims on remand or in this direct appeal after Parks I dismissed those claims without prejudice to postconviction relief.

HOLDINGS

1. Trial-court proceedings on remand must conform to the mandate and the result contemplated by the appellate court's decision; the District Court properly limited the remand to resentencing Parks on the single felony conviction affirmed in Parks I.
2. Arguments that the securities-fraud offense was an absolute-liability offense, that the State failed to prove or the jury was not instructed on a mental state, or that the sentence was limited to a \$500 fine were not available on remand because Parks I foreclosed consideration of those issues; Parks could pursue the appropriate claims in a postconviction proceeding where applicable.

KEY QUOTATIONS

“Trial court proceedings on remand are to comport with the mandate and the result contemplated by the appellate court’s decision.” (¶ 7)

“Thus, the issues of whether § 30-10-301, MCA, is an absolute liability offense requiring reversal or whether Parks’ counsel rendered ineffective assistance were not left open by our decision and could not be raised on remand.” (¶ 7)

FACTUAL BACKGROUND

Parks was convicted of three counts of securities fraud under § 30-10-301(1)(b), MCA. The Montana Supreme Court previously determined that two convictions were included offenses arising from the same transaction, vacated those convictions, affirmed one felony conviction, and remanded for resentencing on that conviction. On remand, Parks sought to reopen issues concerning the offense's mental-state requirement, ineffective assistance of counsel, and whether the sentence was limited to a \$500 fine.

PROCEDURAL HISTORY

Parks was convicted by a jury of three counts of securities fraud and received three consecutive ten-year sentences, with the second and third terms suspended. In Parks I, the Montana Supreme Court vacated two convictions, affirmed one felony conviction, dismissed ineffective-assistance claims without prejudice to postconviction proceedings, and remanded for resentencing on the single conviction. On remand, Parks raised new arguments concerning absolute liability, ineffective assistance, and the legality of his sentence; the District

Court rejected those arguments and resentenced him to ten years in prison with five years suspended. The Supreme Court affirmed, holding that the remand mandate foreclosed those issues on remand and on the present appeal, while leaving them potentially available in a postconviction proceeding.

DISPOSITION

affirmed

CASES CITED

- State v. Parks, 2013 MT 280, 372 Mont. 88, 310 P.3d 1088
- Brown & Brown of MT, Inc. v. Raty, 2013 MT 338, ¶ 10, 372 Mont. 463, 313 P.3d 179
- Haines Pipeline Constr. v. Montana Power Co., 265 Mont. 282, 290, 876 P.2d 632, 637 (1994)

OPINION

PER CURIAM.

February 3 2015 DA 14-0047 Case Number: DA 14-0047 IN THE SUPREME COURT OF THE STATE OF MONTANA 2015 MT 32N STATE OF MONTANA, Plaintiff and Appellee, v. TERRY D. PARKS, Defendant and Appellant. APPEAL FROM: District Court of the Fourth Judicial District, In and For the County of Missoula, Cause No. DC 10-371 Honorable Karen Townsend, Presiding Judge COUNSEL OF RECORD: For Appellant: Robin A. Meguire, Attorney at Law; Great Falls, Montana For Appellee: Timothy C. Fox, Montana Attorney General; Katie F. Schulz, Assistant Attorney General; Helena, Montana Jesse Laslovich, Special Deputy Attorney General, Office of Commissioner of Securities and Insurance; Helena, Montana Kristen Pabst, Missoula County Attorney; Missoula, Montana Submitted on Briefs: January 7, 2015 Decided: February 3, 2015 Filed: _____ Clerk Justice Jim Rice 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 Terry Parks was charged by Amended Information with three counts of security fraud pursuant to § 30-10-301(1)(b), MCA.

After a jury trial, Parks was found guilty of the three counts and sentenced to three consecutive ten-year terms, with the second and third terms suspended. Prior to sentencing, Parks filed a motion arguing that imposition of a sentence for each of the three counts violated § 46-11-410(2)(a), MCA, as they were included offenses arising from the same transaction.

The District Court denied the motion and Parks subsequently appealed to this Court. *State v. Parks*, 2013 MT 280, 372 Mont. 88, 310 P.3d 1088 (Parks I). ¶3 In Parks I, we concluded that the District Court should have granted Parks’ motion and vacated two of his convictions. Parks I, ¶ 31.

We reversed two of Parks’ convictions, affirmed the judgment with regard to a single conviction, and remanded the case with instructions that the District Court “resentence Parks on the one conviction,” because “the District Court may have fashioned a different sentence had it correctly sentenced Parks based on only one conviction.” Parks I, ¶ 36.

We also dismissed Parks’ claims of ineffective assistance of trial counsel without prejudice to raising those claims in a postconviction proceeding, because the record was insufficient to analyze the reasons for the actions of trial counsel. Parks I, ¶ 35. ¶4 Justice Cotter wrote a special concurrence to the Court’s opinion in which she concluded that the offense at issue was not an absolute liability crime, but because the State had taken that position before the District Court, it should have been limited to prosecution of an offense punishable by a fine not exceeding \$500 under § 45-2-104, MCA.

Parks I, ¶¶ 40-41 (Cotter, J., concurring). However, because this issue had not been raised, Justice Cotter did not urge reversal of Parks’ conviction on this premise and wrote “only to suggest” that future felony prosecutions of this offense may face such a challenge. Parks I, ¶ 42 (Cotter, J., concurring). ¶5 Following remand, Parks, represented by new counsel, raised the issue discussed in the concurrence, arguing the remaining conviction should be vacated or limited to a fine of \$500.

His appellate briefing asserts that he also raised ineffective assistance claims against his trial counsel, as he did in his first appeal. The State disputes that such claims were raised on remand. The District Court rejected Parks’ arguments and resentenced him to 10 years in prison with 5 years suspended for the single count of securities fraud. ¶6 On appeal, Parks argues the offense at issue was not an absolute liability offense, and because the State did not prove, and the jury was not instructed, on mental state, the conviction fails and must be reversed; that he was deprived of effective assistance of counsel in the handling of the issue at trial; or, alternatively, that his sentence is illegal because, as an absolute liability offense, the sentence was limited to imposition of a fine not exceeding \$500. ¶7 Trial court proceedings on remand are to comport with the mandate and the result contemplated by the appellate court’s decision.

Brown & Brown of MT, Inc., v. Raty, 2013 MT 338, ¶ 10, 372 Mont. 463, 313 P.3d 179; see also *Haines Pipeline Constr. v. Montana Power Co.*, 265 Mont. 282, 290, 876 P.2d 632, 637 (1994). Here, Parks has lost sight of our decision in Parks I and the remand instructions.

In Parks I, we affirmed his felony conviction, dismissed his ineffective assistance claims without prejudice to pursuing postconviction relief, and remanded with instructions to the District Court to

impose a new sentence on Parks' single felony conviction. Parks I, ¶ 36.

Thus, the issues of whether § 30-10-301, MCA, is an absolute liability offense requiring reversal or whether Parks' counsel rendered ineffective assistance were not left open by our decision and could not be raised on remand. These issues are also improperly raised here, but Parks may raise them in a postconviction proceeding. Likewise, Parks' alternative argument that his felony sentence is illegal because, as an absolute liability offense, the sentence is limited to a fine not exceeding \$500 under § 45-2-104, MCA, was not raised in Parks I. Our remand for imposition of a new felony sentence foreclosed consideration of this issue on remand. ¶8 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 4 issues in this case are legal and are controlled by settled Montana law, which the District Court correctly interpreted. ¶9 Affirmed. /S/ JIM RICE We concur: /S/ MIKE McGRATH /S/ JAMES JEREMIAH SHEA /S/ MICHAEL E WHEAT /S/ PATRICIA COTTER 5