

SUPREME COURT OF MONTANA

State v. Polejewski

2009 MT 315 · No. DA 08-0554 · Decided September 23, 2009

SUMMARY

The Supreme Court of Montana affirmed the denial of Pamela Jo Polejewski’s motion to withdraw guilty and nolo contendere pleas. The court held that the motion was untimely under Montana Code Annotated § 46-16-105(2) and that Polejewski had not presented newly discovered evidence establishing actual innocence or a fundamental miscarriage of justice.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Justice James C. Nelson; Justice W. William Leaphart; Justice Jim Rice; Justice Brian Morris
JURISDICTION	Montana
DECIDED	September 23, 2009
DOCKET	DA 08-0554
DISPOSITION	affirmed
PROCEDURAL POSTURE	Polejewski appealed the Eighth Judicial District Court's order affirming the Cascade County Justice Court's denial of her motion to withdraw a guilty plea.
STANDARD OF REVIEW	The denial of a motion to withdraw a guilty plea is reviewed de novo because the issue is a mixed question of law and fact.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Pamela Jo Polejewski v. State of Montana

TOPICS

- post-conviction relief
- plea bargaining
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal procedure
- criminal appeals
- plea withdrawal

QUESTIONS PRESENTED

1. Whether Polejewski's motion to withdraw her guilty plea was barred as untimely under § 46-16-105(2), MCA.
2. Whether exceptional circumstances or a fundamental miscarriage of justice permitted withdrawal of the plea despite the statutory one-year time bar.
3. Whether the District Court correctly affirmed the Justice Court's denial of the motion.

HOLDINGS

1. A motion to withdraw a guilty plea or nolo contendere plea filed more than one year after the judgment became final is untimely under § 46-16-105(2), MCA, unless exceptional circumstances are shown through newly discovered evidence establishing actual innocence. Polejewski's unsupported assertion of innocence and lack of new evidence did not satisfy that exception.

KEY QUOTATIONS

“We make exceptions to the statutory time bar only in exceptional circumstances.” (¶ 12)

“It is manifest on the face of the briefs and the record this appeal is without merit.” (¶ 13)

FACTUAL BACKGROUND

In January 2006, Polejewski entered guilty pleas in Justice Court to nine counts of failure to vaccinate animals, nine counts of failure to tag animals, and one count of cruelty to animals pursuant to a global plea agreement. She was sentenced to five years, all suspended, subject to financial conditions and restrictions on caring for or owning cats and dogs. More than one year later, she moved to withdraw the plea, asserting that former counsel misrepresented the legal effect of a nolo contendere plea, promised the return of animals, and that she was actually innocent. She presented no new evidence supporting actual innocence.

PROCEDURAL HISTORY

Polejewski entered guilty pleas in Justice Court in January 2006 under a global plea agreement. After the Justice Court denied her March 2007 motion to withdraw the plea as untimely and unsupported by new evidence of actual innocence, she appealed to the District Court, which affirmed. The Montana Supreme Court affirmed the District Court.

DISPOSITION

affirmed

CASES CITED

- State v. Robinson, 2009 MT 170, ¶ 10, 350 Mont. 493, 208 P.3d 851
- State v. Morgan, 2003 MT 193, ¶ 17, 316 Mont. 509, 74 P.3d 1047
- State v. Graham, 2002 MT 237, ¶ 14, 311 Mont. 500, 57 P.3d 54

