

SUPREME COURT OF MONTANA

State v. Sherman

2016 MT 110N · No. DA 14-0524 · Decided May 10, 2016

SUMMARY

The Montana Supreme Court affirmed the District Court’s judgment in Shane Sherman’s misdemeanor DUI case. The Court held that trial before a non-lawyer justice of the peace, without a trial de novo appeal, did not violate Sherman’s constitutional rights to due process or effective assistance of counsel, and it issued the decision as a noncitable memorandum opinion.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Beth Baker; Mike McGrath; Michael E. Wheat; Patricia Cotter; Jim Rice
JURISDICTION	Montana
DECIDED	May 10, 2016
DOCKET	DA 14-0524
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from the District Court's affirmance of a misdemeanor DUI judgment and sentence following remand for a new trial.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; expressly noncitable.
PARTIES	Shane Sherman v. State of Montana

TOPICS

- criminal procedure
- right to counsel
- due process
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal procedure
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether trial of a jailable misdemeanor before a non-lawyer justice of the peace, without the availability of a trial de novo on appeal, violated Sherman's constitutional rights to due process or effective assistance of counsel.

2. Whether the failure to record large portions of the Justice Court trial required dismissal with prejudice.

HOLDINGS

1. Trial before a non-lawyer justice of the peace, even when a trial de novo is unavailable on appeal, did not violate Sherman's constitutional rights to due process or effective assistance of counsel.
2. The District Court's decision and order affirming the Justice Court's judgment and sentence was affirmed.

KEY QUOTATIONS

“this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.” (¶ 1)

“we conclude here that Sherman’s trial before a non-lawyer justice of the peace, even though trial de novo was not available on appeal, did not violate his constitutional right to due process or to effective assistance of counsel.” (¶ 5)

FACTUAL BACKGROUND

Sherman was tried before a jury in Park County Justice Court and convicted of misdemeanor driving under the influence of alcohol. A non-lawyer justice of the peace presided, and trial de novo review was unavailable on appeal. After the District Court ordered a new trial because large portions of the original trial were not recorded, Sherman entered a no-contest plea while reserving his appellate rights, and the original sentence was reinstated.

PROCEDURAL HISTORY

Sherman was convicted by a jury in Park County Justice Court, where a non-lawyer justice of the peace presided. The District Court initially remanded for a new trial because substantial portions of the Justice Court trial had not been recorded. Sherman then entered a no-contest plea while reserving his right to appeal; the Justice Court reinstated the original sentence, and the District Court affirmed. The Montana Supreme Court affirmed the District Court, relying on *State v. Davis*.

DISPOSITION

affirmed

CASES CITED

- *State v. Davis*, 2016 MT 102, ___ Mont. ___, ___ P.3d ___

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