

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PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; expressly noncitable.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

- 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 ___

OPINION

PER CURIAM.

May 10 2016 DA 14-0524 Case Number: DA 14-0524 IN THE SUPREME COURT OF THE STATE OF MONTANA 2016 MT 110N STATE OF MONTANA, Plaintiff and Appellee, v. SHANE SHERMAN, Defendant and Appellant. APPEAL FROM: District Court of the Sixth

Judicial District, In and For the County of Park, Cause No. DC 2013-61 Honorable Brenda Gilbert, Presiding Judge COUNSEL OF RECORD: For Appellant: Chad M. Wright, Chief Appellate Defender, James Reavis, Assistant Appellate Defender, Helena, Montana For Appellee: Timothy C. Fox, Montana Attorney General, Tammy A. Hinderman, Assistant Attorney General, Helena, Montana Bruce E. Becker, Park County Attorney, Kathleen Carrick, Deputy County Attorney, Livingston, Montana Submitted on Briefs: March 23, 2016 Decided: May 10, 2016 Filed: _____ Clerk Justice Beth Baker delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(c), 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 Shane Sherman appeals the November 13, 2013 decision and order of the Sixth Judicial District Court, Park County, denying his motion to dismiss his misdemeanor Driving Under the Influence of Alcohol (DUI) conviction and declining to grant him a trial de novo. ¶3 Sherman was tried in Park County Justice Court—a court of record—before a jury and was found guilty.

A non-lawyer justice of the peace presided over the trial. Sherman appealed to the District Court demanding a trial de novo. Sherman moved to dismiss the case, arguing that the prosecution of a jailable offense before a non-lawyer judge without the option of a trial de novo appeal violated the Due Process and Right to Counsel Clauses of the United States and Montana Constitutions.

Sherman also moved to dismiss the case with prejudice on the ground that the Justice Court failed to record the entire trial. ¶4 The District Court declined to rule on Sherman's due process and right to counsel claims.

The court did, however, reverse the judgment of the Justice Court and remanded the case for a new trial on the ground that Sherman's rights were violated by the Justice Court's failure to record large portions of the trial.

On remand, Sherman entered a plea 2 of no contest, reserving the right to appeal. The Justice Court reinstated the original sentence and Sherman appealed again. The District Court affirmed the Justice Court's judgment and sentence and stayed execution of sentence pending appeal to this Court. ¶5 This appeal concerns substantially similar facts and issues as *State v. Davis*, 2016 MT 102, __ Mont. __, __ P.3d __.

As in that case, 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. ¶6 We have determined to decide this case

pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions.

In the opinion of the Court, Davis resolves the issues on appeal. The District Court's decision and order are affirmed. /S/ BETH BAKER We concur: /S/ MIKE McGRATH /S/ MICHAEL E WHEAT /S/ PATRICIA COTTER /S/ JIM RICE 3