

SUPREME COURT OF MONTANA

State of Montana v. Anthony Scott

2020 MT 178 (Mont. 2020) · No. DA 19-0074 · Decided July 14, 2020

SUMMARY

The Montana Supreme Court held that Anthony Scott’s 1994 federal bank robbery conviction was not, on the record presented, reasonably equivalent to Montana robbery for purposes of establishing a violent-offense predicate under Montana’s persistent felony offender statute. The court also concluded that the State had not presented evidence showing that the federal conviction involved violent conduct. The court reversed the persistent felony offender designation and remanded for resentencing.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Ingrid Gustafson; Ingrid Gustafson; Laurie McKinnon; James Jeremiah Shea; Dirk M. Sandefur; Beth Baker; Jim Rice; Mike McGrath
JURISDICTION	Montana
DECIDED	July 14, 2020
DOCKET	DA 19-0074
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Scott appealed the legality of a persistent felony offender sentencing enhancement imposed after his convictions for two counts of distributing dangerous drugs. He challenged the use of his 1994 federal bank robbery conviction as a predicate violent offense.
STANDARD OF REVIEW	The legality of a criminal sentence imposing more than one year of incarceration is reviewed for legality. A persistent felony offender designation, as a question of law, is reviewed for correctness.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Anthony Scott v. State of Montana

TOPICS

- sentencing
- criminal procedure
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

criminal sentencing

persistent felony offender designation

criminal appellate procedure

statutory interpretation

QUESTIONS PRESENTED

1. Whether Scott's 1994 federal bank robbery conviction under 18 U.S.C. § 2113(a) was reasonably equivalent to Montana robbery under § 45-5-401, MCA, and therefore qualified as a predicate violent offense under § 46-1-202(18), MCA.
2. Whether Scott could challenge the legality of his PFO designation on appeal despite having objected below to the timeliness of the PFO notice rather than expressly challenging the merits of the predicate conviction.
3. Whether the District Court had statutory authority to impose a PFO enhancement when the State had not proven that one of Scott's prior felony convictions was a sexual or violent offense under the 2017 PFO statute.

HOLDINGS

1. A federal bank robbery conviction under 18 U.S.C. § 2113(a) is not, on its face, reasonably equivalent to Montana robbery under § 45-5-401, MCA, because the federal statute encompasses nonviolent conduct involving entry into a bank with intent to commit any felony, while Montana robbery requires bodily injury, a threat or fear of immediate bodily injury, or the commission or threatened commission of another felony during a theft.
2. The State must prove that a prior conviction involved sexual or violent conduct when relying on that conviction as a predicate offense under the 2017 PFO statute; the bare fact of Scott's federal bank robbery conviction was insufficient on this silent record.
3. Scott did not waive his challenge to the legality of the PFO sentence because Montana courts may review an illegal sentence on appeal even when the defendant did not object at sentencing.
4. The District Court lacked statutory authority to designate Scott a persistent felony offender and impose the enhancement because the State did not establish a qualifying sexual or violent predicate offense.

KEY QUOTATIONS

“A district court ‘has no power to impose a sentence in the absence of specific statutory authority.’” (¶ 15)

“Scott’s 1994 federal bank robbery conviction is not reasonably equivalent to the offense of robbery under Montana law and may not be used as a predicate violent offense under § 46-1-202(18), MCA, to impose a persistent felony offender sentence enhancement.” (¶ 20)

FACTUAL BACKGROUND

Scott was convicted in 2018 of two counts of distributing dangerous drugs. The State sought a persistent felony offender designation based on a 2014 Montana burglary conviction and a 1994 federal conviction under 18 U.S.C. § 2113(a) for bank robbery. The District Court imposed the minimum five-year PFO enhancement, but

relied in its written judgment on the repealed PFO statute and did not receive evidence establishing that Scott's federal conviction involved violent conduct.

PROCEDURAL HISTORY

A Yellowstone County jury convicted Scott of two counts of distributing dangerous drugs. The District Court designated him a persistent felony offender and imposed a five-year enhancement under the PFO sentencing scheme, while its written judgment incorrectly cited repealed § 46-18-501, MCA. Scott appealed, and the Montana Supreme Court reversed and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the District Court for resentencing without relying on the challenged PFO designation unless the statutory requirements are otherwise established.

CASES CITED

- State v. Thomas, 2019 MT 155, ¶ 5, 396 Mont. 284, 445 P.3d 777
- State v. Thomas, 2019 MT 155, ¶ 7 n.1, 396 Mont. 284, 445 P.3d 777
- State v. Lenihan, 184 Mont. 338, 343, 602 P.2d 997, 1000 (1979)
- State v. Beam, 2020 MT 156, ¶ 9, 400 Mont. 278, ___ P.3d ___
- State v. Hatfield, 256 Mont. 340, 346, 846 P.2d 1025, 1029 (1993)
- State v. Zimmerman, 2014 MT 173, ¶ 27, 375 Mont. 374, 328 P.3d 1132
- State v. Shults, 2006 MT 100, ¶ 22, 332 Mont. 130, 136 P.3d 507
- State v. McQuiston, 277 Mont. 397, 408, 922 P.2d 519, 526 (1996)
- State v. Dodson, 2009 MT 419, ¶¶ 53-54, 354 Mont. 28, 221 P.3d 687
- State v. Martin, 2019 MT 44, ¶ 24, 394 Mont. 351, 435 P.3d 73
- State v. Zimmerman, 2018 MT 94, ¶ 36, 391 Mont. 210, 417 P.3d 289
- Prince v. United States, 352 U.S. 322, 325-26, 77 S. Ct. 403, 405 (1957)
- Royal v. Tombone, 141 F.3d 596, 602 (5th Cir. 1998)
- United States v. McNeal, 818 F.3d 141, 152 (4th Cir. 2016)
- In re Sams, 830 F.3d 1234, 1239 (11th Cir. 2016)
- Flowers v. Board of Personnel Appeals, 2020 MT 150, ¶ 14, 400 Mont. 238, ___ P.3d ___
- Becker v. Rosebud Operating Services, 2008 MT 285, ¶ 17, 345 Mont. 368, 191 P.3d 435
- City of Missoula v. Mountain Water Co., 2018 MT 114, ¶ 23 n.4, 391 Mont. 288, 417 P.3d 321
- In re M.W., 2012 MT 44, ¶ 14, 364 Mont. 211, 272 P.3d 112
- Fielder v. Fielder, 266 Mont. 133, 142, 879 P.2d 675, 681 (1994)

