

SUPREME COURT OF WYOMING

Amber Rae MacKenzie v. State of Wyoming

MacKenzie, 2014 WY 130 (Wyo. 2014) · No. S-14-0157 · Decided October 16, 2014

SUMMARY

The Wyoming Supreme Court affirmed the district court's order of disposition and probation following Amber Rae MacKenzie's guilty plea to burglary and the revocation of her probation. The court remanded for review of credit for time served and directed the district court to amend the order to include the required firearms advisement.

CASE DETAILS

COURT	Supreme Court of Wyoming
JURISDICTION	Wyoming
DECIDED	October 16, 2014
DOCKET	S-14-0157
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the district court's April 18, 2014, Order of Disposition and Order of Probation following revocation of probation. Appellate counsel filed an Anders motion to withdraw, and the appellant did not file a pro se brief after receiving notice.
STANDARD OF REVIEW	The court reviewed the record and the Anders brief to determine whether the appeal was frivolous and whether the district court's order should be affirmed. The opinion does not identify a separate formal standard of review.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion
PARTIES	Amber Rae MacKenzie v. State of Wyoming

TOPICS

[appellate procedure](#)[criminal procedure](#)[probation](#)[sentencing](#)

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the district court's Order of Disposition and Order of Probation should be affirmed after appointed appellate counsel filed an Anders motion to withdraw and the appellant filed no pro se brief.
2. Whether the district court was required to examine and correct the amount of credit awarded for time served.
3. Whether the district court's order was required to include a statement reflecting the firearms advisement required by statute and rule.

HOLDINGS

1. The district court's April 18, 2014, Order of Disposition and Order of Probation was affirmed, subject to the corrections and remand instructions stated by the Supreme Court.
2. The matter was remanded for the district court to examine whether MacKenzie was entitled to additional credit for time served, including the apparent discrepancy between the 44 days referenced at the deferral hearing and the 33 days awarded in the later order.
3. The amended Order of Disposition and Order of Probation must include a statement that the required firearms advisement was given.

KEY QUOTATIONS

“ORDERED that the district court’s April 18, 2014, “Order of Disposition and Order of Probation” be, and the same hereby is, affirmed, subject to the corrections noted below” (¶ 4)

“ORDERED that this matter is remanded to the district court for that court to examine the question of credit for time served, as noted above” (¶ 5)

“ORDERED that the district court shall enter an amended “Order of Disposition and Order of Probation,” which shall include the firearms advisement required by Wyo. Stat. Ann. § 7-11-507(a) and W.R.Cr.P. 32(b)(1) (E).” (¶ 6)

FACTUAL BACKGROUND

MacKenzie pleaded guilty to one count of burglary in 2013 and initially received probation under Wyo. Stat. Ann. § 7-13-301. Her probation was later revoked, and the district court awarded her 33 days of credit for time served. The prosecuting attorney had previously stated that MacKenzie was entitled to 44 days of credit, and the district court's order did not include the required statement that an adequate firearms advisement had been given.

PROCEDURAL HISTORY

MacKenzie entered an unconditional guilty plea to burglary in 2013 and was placed on probation. After probation was revoked, the district court entered an April 18, 2014, Order of Disposition and Order of Probation awarding 33 days of credit for time served. Appointed appellate counsel filed a motion to withdraw under *Anders v. California*, the Wyoming Supreme Court granted permission to withdraw, and MacKenzie did not file a pro se brief. The Supreme Court affirmed subject to correction of the time-served credit and firearms-advisement provisions.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The district court must examine whether MacKenzie is entitled to additional credit for time served and enter an amended Order of Disposition and Order of Probation that includes the firearms advisement required by Wyo. Stat. Ann. § 7-11-507(a) and W.R.Cr.P. 32(b)(1)(E).

CASES CITED

- Anders v. California, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967)
- Starrett v. State, 2012 WY 133, ¶¶ 11-12, 19, 286 P.3d 1033, 1037-38, 1040 (Wyo. 2012)

OPINION

PER CURIAM.

IN THE SUPREME COURT, STATE OF WYOMING 2014 WY 130 October Term, A.D. 2014 October 16, 2014 AMBER RAE MACKENZIE, Appellant (Defendant), v. S-14-0157 THE STATE OF WYOMING, Appellee (Plaintiff). ORDER AFFIRMING THE DISTRICT COURT’S “ORDER OF DISPOSITION AND ORDER OF PROBATION” [¶1] This matter came before the Court upon its own motion following notification that Appellant has not filed a pro se brief within the time allotted by this Court.

In 2013, Appellant entered an unconditional guilty plea to one count of burglary. Appellant was sentenced to probation, but that probation was later revoked. Appellant filed this appeal to challenge the district court’s April 18, 2014, “Order of Disposition and Order of Probation.” On July 28, 2014, Appellant’s court-appointed appellate counsel filed a “Motion to Withdraw as Counsel,” pursuant to Anders v. California, 386 U.S. 738, 744, 87 S.Ct.

1396, 1400, 18 L.Ed.2d 493 (1967). Following a careful review of the record and the “Anders brief” submitted by appellate counsel, this Court, on August 19, 2014, entered its “Order Granting Permission for Court-Appointed Counsel to Withdraw.” That Order notified Appellant that the district court’s “Order of Disposition and Order of Probation” would be affirmed unless, on or before October 6, 2014, Appellant filed a brief that persuaded this Court that the captioned appeal is not frivolous.

In this Court’s order, the Court also provided notice that ***** at the conclusion of this matter, it will order the district court to examine the matter of credit for time served. This Court notes that, at the hearing where Appellant was given a deferral pursuant to Wyo. Stat. Ann. § 7-13-301, the prosecuting attorney stated that Appellant was entitled to 44 days of credit for time served.

In the resulting “Order of Probation,” the district court stated Appellant would receive credit for time served in jail, but it did not specify the number of days. Later, after Appellant’s “301” probation was revoked, the district court awarded Appellant 33 days of credit, in the “Order of Disposition and Order of Probation.” It appears to this Court that Appellant may be entitled to an additional 44 days of credit for time served. [¶2] This Court also finds the “Order of Disposition and Order of Probation” should be corrected in one respect.

The Court notes that, although Appellant was given an adequate firearms advisement (as required by Wyo. Stat. Ann. § 7-11-507(a)), the district court’s “Order of Disposition and Order of Probation” does not include a statement to that effect, as required by W.R.Cr.P. 32(b)(1)(E) and *Starrett v. State*, 2012 WY 133, ¶¶ 11-12, 19, 286 P.3d 1033, 1037-38, 1040 (Wyo.

2012). [¶3] Now, taking note that Appellant, Amber Rae MacKenzie, has not filed a brief or other pleading within the time allotted, the Court finds that the district court’s “Order of Disposition and Order of Probation” should be affirmed. It is, therefore, [¶4] ORDERED that the district court’s April 18, 2014, “Order of Disposition and Order of Probation” be, and the same hereby is, affirmed, subject to the corrections noted below; and it is further [¶5] ORDERED that this matter is remanded to the district court for that court to examine the question of credit for time served, as noted above; and it is further [¶6] ORDERED that the district court shall enter an amended “Order of Disposition and Order of Probation,” which shall include the firearms advisement required by Wyo.

Stat. Ann. § 7-11-507(a) and W.R.Cr.P. 32(b)(1)(E). [¶7] DATED this 16th day of October, 2014.
BY THE COURT: /s/ E. JAMES BURKE Chief Justice