

SUPREME COURT OF THE STATE OF MONTANA

State v. White Bear

2005 MT 7 (2005) · No. No. 04-271 · Decided January 25, 2005

SUMMARY

The Montana Supreme Court affirmed Brian White Bear’s conviction for failing to register as a violent offender under Montana’s Sexual or Violent Offender Registration Act. The court held that the registration requirement was a separate statutory obligation rather than part of the sentence for his prior offense, and declined to consider an argument raised for the first time on appeal.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Karla M. Gray; Justice James C. Nelson; Justice Patricia O. Cotter; Justice John Warner; Justice Jim Rice
JURISDICTION	Montana
DECIDED	January 25, 2005
DOCKET	No. 04-271
DISPOSITION	affirmed
PROCEDURAL POSTURE	White Bear appealed after pleading guilty to failing to register as a violent offender while reserving his right to challenge the denial of his motion to dismiss the charging information.
STANDARD OF REVIEW	The grant or denial of a motion to dismiss in a criminal case is reviewed de novo because it presents a question of law.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Brian White Bear v. State of Montana

TOPICS

- criminal procedure
- due process
- appellate procedure
- preservation of error
- statutory interpretation

PRACTICE AREAS

- criminal procedure
- constitutional law
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the information charging White Bear with failure to register as a violent offender should have been dismissed because the sentencing court did not provide notice of the registration duty.
2. Whether the State waived enforcement of the registration requirement by failing to include it in or correct White Bear's original sentence.

HOLDINGS

1. The failure-to-register charge was not subject to dismissal on the ground that the sentencing court did not include or provide notice of the registration duty, because the Sexual or Violent Offender Registration Act creates a separate statutory offense and its registration requirements are not part of the punishment imposed for the original violent offense.
2. The court would not consider White Bear's waiver claim because he failed to raise it in the District Court and raised it for the first time on appeal.

KEY QUOTATIONS

“Violation of the SVORA registration requirements is a separate statutory offense; the registration requirements are not part of criminal sentencing on the original sexual or violent offense.” (¶ 8)

“We will not consider new arguments raised for the first time on appeal.” (¶ 10)

FACTUAL BACKGROUND

White Bear pleaded guilty in 1996 to felony partner or family member assault and ultimately discharged the full balance of his sentence on May 12, 2002. Upon release from prison, he was advised that he was required to register as a violent offender under Montana's Sexual or Violent Offender Registration Act. He was arrested and charged in January 2003 with failing to maintain his registration.

PROCEDURAL HISTORY

The Thirteenth Judicial District Court of Yellowstone County denied White Bear's motion to dismiss the information charging failure to register as a violent offender. White Bear then pleaded guilty, reserved his right to appeal the denial, and appealed to the Montana Supreme Court, which affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Goebel, 2001 MT 73, ¶ 10, 305 Mont. 53, ¶ 10, 31 P.3d 335, ¶ 10
- State v. Mount, 2003 MT 275, ¶ 68, 317 Mont. 481, ¶ 68, 78 P.3d 829, ¶ 68
- State v. Martinez, 2003 MT 65, ¶ 17, 314 Mont. 434, ¶ 17, 67 P.3d 207, ¶ 17

OPINION

GRAY, J.

No. 04-271 IN THE SUPREME COURT OF THE STATE OF MONTANA 2005 MT 7 STATE OF MONTANA, Plaintiff and Respondent, v. BRIAN WHITE BEAR, Defendant and Appellant. APPEAL FROM: District Court of the Thirteenth Judicial District, In and For the County of Yellowstone, Cause No. DC 03-0080 Honorable Susan P. Watters, Presiding Judge COUNSEL OF RECORD: For Appellant: Carl DeBelly, Deputy Public Defender, Billings, Montana For Respondent: Hon. Mike McGrath, Attorney General; Pamela P. Collins, Assistant Attorney General, Helena, Montana Dennis Paxinos, Yellowstone County Attorney; Laura Watson, Deputy County Attorney, Billings, Montana Submitted on Briefs: December 15, 2004 Decided: January 25, 2005 Filed: _____ Clerk Chief Justice Karla M. Gray delivered the Opinion of the Court. ¶1 The Thirteenth Judicial District Court, Yellowstone County, entered judgment against Brian White Bear for failing to register as a violent offender.

White Bear appeals. We affirm. ¶2 The issue is whether the District Court erred in denying White Bear's motion to dismiss the information charging him with failing to register as a violent offender. BACKGROUND ¶3 In 1996, White Bear pled guilty to felony partner or family member assault (PFMA). He received a three-year deferred imposition of sentence, which was revoked in 1999 after he violated its terms.

After he was resentenced, White Bear was revoked and resentenced on two more occasions. He finally discharged the full balance of his sentence on May 12, 2002. ¶4 When White Bear was released from prison in May of 2002, he was advised of the requirement that he register as a violent offender pursuant to the Sexual or Violent Offender Registration Act (SVORA), §§ 46-23-501 through -520, MCA.

On January 26, 2003, White Bear was arrested and charged with failing to maintain his violent offender registration. He moved to dismiss the information, and the District Court denied the motion. White Bear pled guilty, reserving the right to appeal the denial of his motion to dismiss. He now appeals. 2 STANDARD OF REVIEW ¶5 The grant or denial of a motion to dismiss in a criminal case is a question of law which we review de novo.

State v. Goebel, 2001 MT 73, ¶ 10, 305 Mont. 53, ¶ 10, 31 P.3d 335, ¶ 10 (citations omitted). DISCUSSION ¶6 Did the District Court err in denying White Bear's motion to dismiss the information charging him with failing to register as a violent offender? ¶7 White Bear argues the charges against him should have been dismissed for two reasons.

First, he claims he cannot be charged with failure to register because the District Court did not give him notice of the duty to register. He maintains the registration requirement violates his right to due process of law. ¶8 White Bear's argument is based on the incorrect premise that registration

was a condition of his sentence for the previous PFMA offense and, as such, was part of the punishment for that offense.

Violation of the SVORA registration requirements is a separate statutory offense; the registration requirements are not part of criminal sentencing on the original sexual or violent offense. See *State v. Mount*, 2003 MT 275, ¶ 68, 317 Mont. 481, ¶ 68, 78 P.3d 829, ¶ 68. ¶9 White Bear's second claim on appeal is that he has a vested interest in both the terms and the discharge of his PFMA sentence.

He asserts that, because the State failed to correct the sentence by adding the SVORA registration requirement, it waived its right to require him to register as a violent offender. 3 ¶10 White Bear did not raise this claim before the District Court.

We will not consider new arguments raised for the first time on appeal. See *State v. Martinez*, 2003 MT 65, ¶ 17, 314 Mont. 434, ¶ 17, 67 P.3d 207, ¶ 17 (citations omitted). Therefore, we do not consider White Bear's second claim. ¶11 Affirmed. /S/ KARLA M. GRAY We concur: /S/ JAMES C. NELSON /S/ PATRICIA O. COTTER /S/ JOHN WARNER /S/ JIM RICE 4