

MONTANA SUPREME COURT, SENTENCE REVIEW DIVISION

State v. Don Benton

377 Mont. 1 (2014) · Decided March 31, 2014

SUMMARY

The Montana Supreme Court Sentence Review Division reviewed Don Benton's sentences following revocation of deferred sentences for accountability for theft and criminal mischief. The Division unanimously affirmed the district court's sentences, concluding that they were neither clearly inadequate nor clearly excessive.

CASE DETAILS

COURT	Montana Supreme Court, Sentence Review Division
WRITING FOR THE COURT	Brad Newman; Kathy Seeley; Brenda Gilbert
JURISDICTION	Montana
DECIDED	March 31, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	After revocation of deferred sentences and imposition of concurrent seven-year sentences with two years suspended on four felony counts, Don Benton applied to the Montana Supreme Court Sentence Review Division for review of his sentence.
STANDARD OF REVIEW	The district court sentence is presumed correct and may be reduced or increased only if it is clearly inadequate or clearly excessive.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Don Benton v. State of Montana

TOPICS

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

PRACTICE AREAS

- criminal law
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether Benton's revoked deferred sentences were clearly inadequate or clearly excessive and therefore subject to modification by the Montana Supreme Court Sentence Review Division.

HOLDINGS

1. The sentences were not clearly inadequate or clearly excessive, so the Sentence Review Division affirmed them.

KEY QUOTATIONS

“The sentence imposed by the District Court is presumed correct. The sentence shall not be reduced or increased unless it is clearly inadequate or clearly excessive.” (at 2)

FACTUAL BACKGROUND

Benton originally received deferred sentences for four felony counts involving accountability for theft and criminal mischief. After the deferred sentences were revoked on November 14, 2013, the district court imposed seven-year sentences on each count, with two years suspended and the sentences running concurrently. Benton sought review by the Montana Supreme Court Sentence Review Division, which considered his reasons for modification and found them insufficient.

PROCEDURAL HISTORY

On October 8, 2009, the district court deferred imposition of sentence on four felony counts involving accountability for theft and criminal mischief. The deferred sentences were revoked on November 14, 2013, and the court imposed seven-year Montana Department of Corrections sentences on each count, with two years suspended and the sentences running concurrently. Benton sought sentence review, and the Sentence Review Division affirmed the district court's sentences.

DISPOSITION

affirmed

OPINION

PER CURIAM.

On October 8, 2009, the Defendant sentenced for Accountability for Theft, Count I, a felony, in violation of Sections 45-2-301 and 45-6-301(1)(a), MCA the Court defers imposition of the sentence for a period of Three (3) years on the conditions stated in the Judgment; for Accountability for Theft, Count II, a felony, in violation of Sections 45-2-301 and 45-6-301(1)(a), MCA, the Court defers imposition of the sentence for a period of Three (3) years on the conditions stated in the Judgment, this sentence shall run concurrent with the sentence in Count I; for Criminal Mischief, Count I, a felony, in violation of Section 45-6-101(1)(a), MCA the Court defers imposition of the sentence for a period of Three (3) years on the conditions stated in the Judgment, this sentence shall run consecutively to the sentences in Charges 1 and 2 above; and for Criminal

Mischief, Count II, a felony, in violation of Section 45-6-101(lXa), MCA the Court defers imposition of the sentence for a period of Three (3) yearn on the conditions stated in the Judgment, this sentence shall run concurrent with the sentence in Charge 3 above and consecutively to the sentences in Charges 1 and 2 above; and other terms and conditions given in the Judgment on October 8,2009.

[Amended Judgment on October 19,2009, amended conditions of probation supervision.] On November 14,2013, the deferred imposition of sentences on Charges #l-#4 were revoked. The Defendant was sentenced for Accountability for Theft, Count I, a felony, in violation of Sections 45-2-301 and 45-6-301(1)(a), MCA to the Montana Department of Corrections for Seven (7) years, with Two (2) years suspended; for Accountability for Theft, Count II, a felony, in violation of Sections 45-2-301 and 45-6-301(1)(a), MCA, to the Montana Department of Corrections for Seven (7) years, with Two (2) years suspended, this sentence shall ran concurrently with the sentence in Count I above; for Criminal Mischief, Count I, a felony, in violation of Section 45-6-101(1)(a), MCA to the Montana Department of Corrections for Seven (7) years, with Two (2) years suspended, this sentence shall ran concurrently to the sentences in Charges 1 and 2 above; and for Criminal Mischief, Count n, a felony, in violation of Section 45-6-101(1)(a), MCA to the Montana Department of Corrections for Seven (7) years, with Two (2) years suspended, this sentence shall run concurrently with the sentence in Charges 1,2 and 3 above; and other terms and conditions given in the Judgment of Revocation of Deferred Sentence on November 14, 2013. *2DATED this 31st day of March, 2014.

On February 27,2014, the Defendant's Application for review of that sentence was heard by the Sentence Review Division of the Montana Supreme Court (hereafter "the Division"). The Defendant was present by Vision Net from the Silver Bow County Courthouse in Butte, Montana.

The Defendant was represented by Ed Sheehy, Jr., Montana Office of Public Defender. The State was not represented. Before hearing the Application, the Defendant was advised that the Division has the authority not only to reduce the sentence or affirm it, but also increase it.

The Defendant was further advised that there is no appeal from a decision of the Division. The Defendant acknowledged that he understood this and stated that he wished to proceed. Rule 12, Rules of the Sentence Review Division of the Supreme Court of Montana, provides that, "The sentence imposed by the District Court is presumed correct.

The sentence shall not be reduced or increased unless it is clearly inadequate or clearly excessive." (Section 46-18-904(3), MCA). The Division finds that the reasons advanced for modification are insufficient to hold that the sentence imposed by the District Court is clearly inadequate or clearly excessive.

Therefore, it is the unanimous decision of the Division that the sentence shall be AFFIRMED. Done in open Court this 27th day of February, 2014. Chairperson, Hon. Brad Newman, Member Hon. Kathy Seeley and Member Hon. Brenda Gilbert.

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