

SUPREME COURT OF MONTANA

Patrick Keith Hirt v. State of Montana, 2009 MT 116, 350 Mont. 162

206 P.3d 908 (Mont. 2009) · No. DA 07-0774 · Decided April 8, 2009

SUMMARY

The Supreme Court of Montana affirmed the denial of Patrick Keith Hirt's amended petition for postconviction relief. The court held that Hirt was not sentenced based on materially inaccurate misinformation regarding his prior felony convictions and that his counsel provided objectively reasonable assistance at sentencing, on direct appeal, and in the postconviction proceeding.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Mike McGrath; James C. Nelson; Patricia Cotter; William Leaphart; Jim Rice
JURISDICTION	Montana
DECIDED	April 8, 2009
DOCKET	DA 07-0774
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hirt appealed the Ravalli County District Court's denial of his amended petition for postconviction relief, asserting sentencing based on materially inaccurate information and ineffective assistance of counsel at sentencing, on direct appeal, and in the postconviction proceeding.
STANDARD OF REVIEW	The court reviewed the denial of postconviction relief for clearly erroneous factual findings and correct legal conclusions. Constitutional sentencing issues were reviewed de novo, as were ineffective-assistance claims, which present mixed questions of fact and law.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential
PARTIES	Patrick Keith Hirt v. State of Montana

TOPICS

- state post-conviction relief
- ineffective assistance
- sentencing
- due process
- appellate procedure

PRACTICE AREAS

state post-conviction relief

criminal procedure

ineffective assistance of counsel

sentencing

appellate procedure

QUESTIONS PRESENTED

1. Whether Hirt was designated a Level 3 sexual offender and sentenced based on materially inaccurate misinformation in violation of due process.
2. Whether Hirt received ineffective assistance of counsel at sentencing because counsel did not have a risk assessment rescored or call the second evaluator as a witness.
3. Whether appellate counsel was ineffective for declining to raise the sentencing-misinformation issue on direct appeal.
4. Whether postconviction counsel was ineffective based on allegations raised for the first time in an untimely pro se filing.

HOLDINGS

1. Hirt was not sentenced based on materially inaccurate misinformation because the sentencing court knew before sentencing that he had one prior felony conviction, considered the corrected criminal history, and independently evaluated the other relevant factors supporting the Level 3 designation.
2. Hirt failed to establish ineffective assistance of counsel because sentencing counsel's decisions not to seek rescoring of the risk assessments and not to call the second evaluator were objectively reasonable, appellate counsel reasonably investigated and declined to raise the sentencing issue while successfully pursuing other claims, and the allegations against postconviction counsel were procedurally barred and unsupported.

KEY QUOTATIONS

“A defendant is entitled under the United States and Montana Constitutions to due process protection against sentencing based upon misinformation.” (¶ 25)

“The reviewing court must carefully eliminate the distorting effects of hindsight and must apply a strong presumption that counsel's conduct falls within the wide range of reasonable assistance and that it represents sound trial strategy.” (¶ 30)

FACTUAL BACKGROUND

Hirt pleaded guilty to sexual assault pursuant to an agreement under which the State recommended no more than ten years. An initial presentence investigation incorrectly listed three prior felony convictions, but the error was corrected before sentencing to reflect one felony conviction, and the sentencing recommendation was reduced to ten years. Two psychosexual evaluators nevertheless recommended a Level 3 sexual-offender designation based on multiple factors, including substance abuse, risk-assessment results, credibility, mental-health issues, and Hirt's failure to accept responsibility. The district court imposed the agreed ten-year sentence and Level 3 designation.

PROCEDURAL HISTORY

Hirt pleaded no contest and later guilty to sexual assault under a plea agreement after the State dismissed a separate charge. The district court sentenced him to ten years and designated him a Level 3 sexual offender. On an earlier direct appeal, the Montana Supreme Court remanded limited sentencing issues concerning restitution and payment for appointed counsel. Hirt then filed a postconviction petition, after an evidentiary hearing the district court denied relief, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Hirt, 2005 MT 285, 329 Mont. 267, 124 P.3d 147
- Whitlow v. State, 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861
- State v. Phillips, 2007 MT 117, ¶¶ 11, 17, 337 Mont. 248, 159 P.3d 1078
- Bauer v. State, 1999 MT 185, ¶ 24, 295 Mont. 306, 983 P.2d 955
- Strickland v. Washington, 466 U.S. 668, 687 (1984)
- Dawson v. State, 2000 MT 219, ¶ 147, 301 Mont. 135, 10 P.3d 49