

SUPREME COURT OF MONTANA

Samuel Scott Johnson v. Mike Mahoney, Warden, and State of Montana, 2009 MT 275, 352 Mont. 136

217 P.3d 1025 (2009) · No. DA 09-0111 · Decided August 18, 2009

SUMMARY

The Supreme Court of Montana treated Johnson’s attempted appeal from the denial of habeas corpus as an original habeas petition. The court denied and dismissed the petition, holding that the residential sex offender treatment program authorized by section 46-18-207, MCA (2007), had not yet been established, that Johnson was ineligible because of his aggravated kidnapping conviction, and that participation was discretionary with the Department of Corrections.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Cotter; Mike McGrath; John Warner; Brian Morris; Jim Rice
JURISDICTION	Montana
DECIDED	August 18, 2009
DOCKET	DA 09-0111
DISPOSITION	dismissed
PROCEDURAL POSTURE	Johnson sought review of the Third Judicial District Court's denial of his petition for a writ of habeas corpus. Because denial of a habeas petition by a district court was not appealable, the Supreme Court treated the matter as an original habeas proceeding.
STANDARD OF REVIEW	In a habeas proceeding, the petitioner bears the burden of presenting a record sufficient to make a prima facie showing that the challenged order violated, deprived, infringed, or denied constitutional, statutory, or legal rights.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential unless otherwise limited by later authority.
PARTIES	Samuel Scott Johnson v. Mike Mahoney, Warden, State of Montana

TOPICS

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QUESTIONS PRESENTED

1. Whether the Supreme Court could review the District Court's denial of Johnson's habeas petition by treating the matter as an original habeas proceeding.
2. Whether Johnson was entitled to habeas relief or sentence suspension under section 46-18-207, MCA (2007), based on his prior participation in sex-offender treatment programs.
3. Whether Johnson was eligible for placement in the statutory residential sexual-offender treatment program.
4. Whether participation in the program was mandatory for the Department of Corrections or subject to its discretion.

HOLDINGS

1. Although denial of a writ of habeas corpus by a district court is not appealable, the Supreme Court may treat the filing as an original petition for habeas corpus.
2. Johnson was not entitled to habeas relief or sentence suspension because the residential sexual-offender treatment program contemplated by section 46-18-207 had not been established, and his prior treatment did not constitute completion of that statutory program.
3. Johnson was ineligible for the residential sexual-offender treatment program because his aggravated-kidnapping conviction fell within the statutory exclusion in section 46-18-207(4)(a), MCA.
4. Even if Johnson were otherwise eligible, participation in the program would remain subject to the Department of Corrections' discretion because the statute states that the Department may, rather than must, place an offender in the program.

KEY QUOTATIONS

"The purpose of a writ of habeas corpus is "to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint." (¶ 6)

"The statute states that DOC may place an offender in the program, but it is not required to do so." (¶ 8)

FACTUAL BACKGROUND

Johnson pleaded guilty to felony aggravated kidnapping and felony sexual intercourse without consent in 1996 and received concurrent sentences of ten and forty years. In 2007, Montana enacted legislation authorizing a residential sexual-offender treatment program and potential sentence suspension for qualifying inmates. Johnson claimed that treatment programs he completed in Arizona and Montana qualified under the new statute and

entitled him to suspension of the remaining portion of his sentence. The statutory program had not yet been established, and Johnson's aggravated-kidnapping conviction independently placed him within a listed statutory exclusion.

PROCEDURAL HISTORY

Johnson pleaded guilty in 1996 to aggravated kidnapping and sexual intercourse without consent and received concurrent prison sentences. After enactment of Senate Bill 547 and codification of section 46-18-207, MCA (2007), he petitioned for habeas relief, arguing that his prior sex-offender treatment qualified him for sentence suspension. The District Court denied relief, concluding that the statute did not apply retroactively and that Johnson was excluded by the statutory exceptions. The Supreme Court treated the matter as an original habeas petition and denied and dismissed it.

DISPOSITION

dismissed

CASES CITED

- State v. Brister, 2002 MT 13, ¶ 26, 308 Mont. 154, 41 P.3d 314
- Morrison v. Mahoney, 2002 MT 21, ¶ 8, 308 Mont. 196, 41 P.3d 320
- In re Hart, 178 Mont. 235, 241, 583 P.2d 411, 414 (1978)
- Miller v. Eleventh Judicial Dist. Ct., 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186
- Petition of Dyer, 154 Mont. 499, 500, 463 P.2d 895, 896 (1969)
- Petition of Tooker, 148 Mont. 69, 73, 417 P.2d 87, 89 (1966)

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