

SUPREME COURT OF MONTANA

Alan Michael Plackiewicz v. State of Montana

182 P.3d 762 (Mont. 2008) · No. DA 07-0265 · Decided March 4, 2008

SUMMARY

The Supreme Court of Montana affirmed the dismissal of Alan Michael Plackiewicz's petition for postconviction relief. The court held that his guilty pleas were knowing, intelligent, and voluntary, and that he failed to establish ineffective assistance of counsel concerning the investigation of evidentiary issues.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Jim Rice; Chief Justice Karla M. Gray; Justice W. William Leaphart; Justice John Warner; Justice Brian Morris
JURISDICTION	Montana
DECIDED	March 4, 2008
DOCKET	DA 07-0265
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plackiewicz appealed the Eighteenth Judicial District Court's dismissal of his petition for postconviction relief, which sought to set aside his convictions and withdraw his guilty pleas.
STANDARD OF REVIEW	The denial of postconviction relief is reviewed for clearly erroneous factual findings and correct conclusions of law. Denial of a motion to withdraw a guilty plea and ineffective-assistance claims are reviewed de novo as mixed questions of law and fact. The district court's interpretation and application of law are reviewed for correctness.
PRECEDENTIAL VALUE	Noncitable memorandum decision; not precedent under Montana Supreme Court Internal Operating Rules.
PARTIES	Alan Michael Plackiewicz v. State of Montana

TOPICS

- post-conviction relief
- ineffective assistance
- plea bargaining
- criminal procedure
- appellate procedure

PRACTICE AREAS

criminal procedure

post-conviction relief

ineffective assistance of counsel

plea bargaining

QUESTIONS PRESENTED

1. Whether Plackiewicz's guilty pleas were not knowing, intelligent, and voluntary because the district court allegedly misled him about the relationship between his case and the Keeney case.
2. Whether trial counsel provided ineffective assistance by failing adequately to investigate whether evidentiary problems underlying the Keeney dismissal affected Plackiewicz's case.

HOLDINGS

1. The guilty pleas were knowing, intelligent, and voluntary, and the district court did not clearly err in finding them voluntary.
2. Plackiewicz failed to establish ineffective assistance of counsel because counsel's investigation and advice fell within the accepted range of professional conduct, and the postconviction petition was properly dismissed.

KEY QUOTATIONS

"The voluntariness of a guilty plea is reviewed pursuant to the well-established Brady standard, which considers a guilty 'plea voluntary only when the defendant is 'fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel'" (¶ 9)

"With respect to the first prong, there is a 'strong presumption' that counsel's actions represent trial strategy and are within the broad scope of reasonable professional conduct." (¶ 12)

FACTUAL BACKGROUND

Plackiewicz faced drug-related charges in two causes arising from the sale and possession of dangerous drugs. After learning that another defendant's case had been dismissed because of evidence-handling problems involving the Belgrade Police Department, Plackiewicz and his counsel investigated whether similar problems affected his case. Counsel concluded that the evidence in Plackiewicz's case had been photographed and documented and that the Keeney dismissal did not provide a basis for dismissal. During the plea colloquy, Plackiewicz acknowledged discussing the issue with counsel, stated that he understood the differences between the cases, and proceeded to plead guilty.

PROCEDURAL HISTORY

Plackiewicz was charged in two criminal causes, entered guilty pleas, withdrew the initial pleas after the State withdrew its sentencing recommendation, and then entered a second plea agreement covering four drug offenses. He later sought postconviction relief, arguing that the pleas were involuntary and resulted from misinformation and ineffective assistance of counsel. After a hearing, the District Court denied relief and dismissed the petition; the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Garrett v. State, 2005 MT 197, ¶ 10, 328 Mont. 165, 119 P.3d 55
- State v. Warclub, 2005 MT 149, ¶¶ 17-18, 23, 327 Mont. 352, 114 P.3d 254
- State v. Meyers, 2007 MT 230, ¶ 5, 339 Mont. 160, 168 P.3d 645
- State v. Morgan, 2003 MT 193, ¶ 9, 316 Mont. 509, 74 P.3d 1047
- State v. Lone Elk, 2005 MT 56, ¶ 21, 326 Mont. 214, 108 P.3d 500
- Brady v. United States, 397 U.S. 742, 755, 90 S. Ct. 1463, 1472 (1970)
- State v. Muhammad, 2005 MT 234, ¶¶ 14, 24, 328 Mont. 397, 121 P.3d 521
- Hans v. State, 283 Mont. 379, 410-11, 942 P.2d 674, 693 (1997)
- State v. Hendricks, 2003 MT 223, ¶ 7, 317 Mont. 177, 75 P.3d 1268

OPINION

PER CURIAM.

2008 MT 76N ALAN MICHAEL PLACZKIEWICZ, Petitioner and Appellant, v. STATE OF MONTANA, Respondent and Appellee. No. DA 07-0265 Supreme Court of Montana. Submitted on Briefs: February 13, 2008 Decided: March 4, 2008 For Appellant: Andrew J. Breuner, Law Office of Andrew J. Breuner, Gallatin Gateway, Montana For Appellee: Honorable Mike McGrath, Attorney General; Tammy K. Plubell, Assistant Attorney General, Helena, Montana, Marty Lambert, County Attorney; Erik N. Kitzmiller, Deputy County Attorney, Bozeman, Montana Justice Jim Rice delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d)(v), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum decision shall not be cited as precedent.

It shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number and result to the State Reporter Publishing Company and West Group in the quarterly table of noncitable cases issued by this Court. ¶2 Appellant Alan Michael Placzkiwicz (Placzkiwicz) appeals from the order of the Eighteenth Judicial District Court, Gallatin County, dismissing his petition for postconviction relief.

We affirm. ¶3 On July 19, 2004, Placzkiwicz was charged with three drug-related felonies in Cause DC 04-219. These charges arose from Placzkiwicz's sale of crystal methamphetamine to a confidential informant. Prior to resolution of DC 04-219, on December 16, 2004, Placzkiwicz telephoned a Belgrade dispatcher asking for help. Officers arrived at Placzkiwicz's residence where Placzkiwicz was found nearly unconscious and suffering from a stab wound.

During a protective sweep the police observed white powder on a marble cutting board in the bedroom and a glass pipe commonly used for smoking methamphetamine. The Belgrade officers, in conjunction with the Missouri River Drug Task Force (MRDTF), secured a search warrant and returned to Placzekiewicz's residence where they found two bindles of cocaine totaling seventeen grams, five bindles of methamphetamine totaling seventy-two grams, twenty-eight Oxycodone pills, a glass pipe, snort tube, syringes, weighing scales, several small plastic bindles and other drug paraphernalia.

The officers placed all evidence in the evidence room at the Belgrade police station. Placzekiewicz was subsequently charged with three counts of criminal possession of dangerous drugs with intent to distribute in cause DC 04-411. ¶4 On January 14, 2005, Placzekiewicz pled guilty to all three charges in both cases. Pursuant to the agreement, the State would recommend a fifteen-year sentence to the Department of Corrections with ten years suspended.

On February 3, 2005, Placzekiewicz tested positive for dangerous drugs and the State subsequently filed an application to revoke his release and withdrew the plea agreement. On March 31, 2005, Placzekiewicz appeared with his defense counsel, William Bartlett (Bartlett), and withdrew his guilty pleas. Thereafter, Placzekiewicz again entered a plea agreement with the State whereby he would plead guilty to four charges and both parties were free to make appropriate sentencing recommendations. ¶5 Prior to entering his second guilty plea, Placzekiewicz discovered that the case against Grayson Keeney, the man charged with stabbing him, was dismissed after the County Attorney discovered numerous problems with the handling of evidence and possible destruction of exculpatory evidence by the Belgrade Police Department.

Placzekiewicz and Bartlett discussed the possibility of his second case, DC 04-411, being dismissed due to similar evidentiary problems since his arrest in DC 04-411 arose in conjunction with the events surrounding the State v. Keeney case. Bartlett met with the prosecutor and discussed the possibility of dismissal. Bartlett was convinced that Placzekiewicz's case was unaffected by the Keeney dismissal. ¶6 At the change of plea hearing, Placzekiewicz indicated that he had discussed his case with Bartlett, did not have communication problems with Bartlett, and was satisfied with Bartlett's performance.

However, Placzekiewicz asked the court about the Keeney case and its possible connection to his case. The court asked if he understood why Bartlett had said the Keeney case did not pertain to his case and asked if Placzekiewicz needed more time to talk with Bartlett about the issue. Placzekiewicz responded that he understood "to a certain degree" and did not need more time to discuss his case with Bartlett.

The court briefly explained that Placzekiewicz's case involved drug charges and was investigated by both the MRDTF and the Belgrade Police Department, as opposed to Keeney's case, which was investigated solely by the Belgrade Police Department. Placzekiewicz indicated that he understood

the differences between the cases and stated that he was still comfortable proceeding with the change of plea.

Thereafter Placzekiewicz pled guilty to two counts of criminal distribution of dangerous drugs in DC 04-219, felonies, in violation of § 45-9-101, MCA, and two counts of criminal possession of dangerous drugs with intent to distribute in DC 04-411, felonies, in violation of § 45-9-103, MCA. ¶7 On November 18, 2005, Placzekiewicz filed a pro se motion for counsel in both cases to provide assistance with postconviction relief.

Current counsel, Andrew Breuner, was appointed and Placzekiewicz filed a motion for postconviction relief on August 7, 2006. Placzekiewicz argued that the court should set aside his convictions and permit him to withdraw his guilty pleas because: (1) his pleas were not knowing, voluntary, and intelligent and (2) his pleas were the product of misinformation and ineffective assistance of counsel.

Following a hearing, the court denied Placzekiewicz's request to set aside his convictions and dismissed the petition for postconviction relief. Placzekiewicz appeals. ¶8 We review the denial of a petition for postconviction relief to determine whether the district court's findings of fact are clearly erroneous and its conclusions of law correct. *Garrett v. State*, 2005 MT 197, ¶ 10, 328 Mont.

165, ¶ 10, 119 P.3d 55, ¶ 10. A district court's denial of a motion to withdraw a guilty plea is a mixed question of law and fact which we review de novo. *State v. Warclub*, 2005 MT 149, ¶ 17, 327 Mont. 352, ¶ 17, 114 P.3d 254, ¶ 17. Ineffective assistance of counsel claims are also mixed questions of law and fact, which we review de novo. *State v. Meyers*, 2007 MT 230, ¶ 5, 339 Mont.

160, ¶ 5, 168 P.3d 645, ¶ 5. A petitioner seeking to reverse a lower court's denial of a postconviction petition based upon a claim of ineffective assistance of counsel bears a heavy burden. *State v. Morgan*, 2003 MT 193, ¶ 9, 316 Mont. 509, ¶ 9, 74 P.3d 1047, ¶ 9. Findings of fact are clearly erroneous if they are unsupported by substantial evidence, the court misapprehended the effect of the evidence, or review of the record convinces us that a mistake has been made.

Warclub, ¶ 23. We review the district court's interpretation of the law, and application of the law to the facts, for correctness. *Warclub*, ¶ 23. ¶9 The voluntariness of a guilty plea is reviewed pursuant to the well-established Brady standard, which considers a guilty "plea voluntary only when the defendant is 'fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel....'" *State v. Lone Elk*, 2005 MT 56, ¶ 21, 326 Mont.

214, ¶ 21, 108 P.3d 500, ¶ 21 (quoting *Brady v. United States*, 397 U.S. 742, 755, 90 S. Ct. 1463, 1472 (1970)); see also *Warclub*, ¶ 18 (reaffirming "our intention to use the Brady standard for the voluntariness of guilty pleas, as articulated in *Brady*"). When determining if a defendant entered a plea voluntarily and whether a district court erred in denying a motion to withdraw a plea, we examine "case-specific considerations."

These considerations include the adequacy of the district court's interrogation, the benefits obtained from a plea bargain, the withdrawal's timeliness, and other considerations that may affect the credibility of the claims presented. *State v. Muhammad*, 2005 MT 234, ¶¶ 14, 24, 328 Mont. 397, ¶¶ 14, 24, 121 P.3d 521, ¶¶ 14, 24. ¶10 Here, Placzekiewicz contends that the District Court's findings of fact in support of its determination that Placzekiewicz's pleas were voluntary are clearly erroneous.

Specifically, Placzekiewicz contends that the court erred during the initial change of plea hearing when it briefly discussed the Keeney case with Placzekiewicz, thereby misleading Placzekiewicz and "inducing" him to enter a guilty plea. A review of the record convinces us otherwise. During this interlude, the court repeatedly asked Placzekiewicz if he understood the differences between his case and the Keeney case, whether he had discussed the issue with Bartlett, and whether he needed additional time before entering a guilty plea.

Placzekiewicz repeatedly represented that he understood the issue, had discussed it with Bartlett, and wished to proceed with the change of plea. The exchange between Placzekiewicz and the court convinces us that Placzekiewicz was fully aware of the consequences of his plea and entered the plea knowingly, intelligently, and voluntarily. Placzekiewicz also contends that several other findings of fact are clearly erroneous, but a review of the record clearly convinces us otherwise and we need not discuss each assertion. ¶11 Placzekiewicz's second argument is that he would not have pled guilty but for Bartlett's ineffective assistance of counsel.

Placzekiewicz contends that Bartlett offered ineffective assistance by not adequately investigating the impact the Keeney dismissal had on his case. The State responds that Bartlett was aware of the problems with the Belgrade Police Department and investigated the possibility of deficient investigative techniques that could benefit Placzekiewicz and discussed his findings with Placzekiewicz. ¶12 Following the Strickland test for ineffective assistance of counsel in regard to a guilty plea, the defendant must show (1) that his counsel's advice fell outside the range of competence demanded of a criminal attorney and (2) but for counsel's deficient performance, he would not have entered a guilty plea.

Hans v. State, 283 Mont. 379, 410-11, 942 P.2d 674, 693 (1997). With respect to the first prong, there is a "strong presumption" that counsel's actions represent trial strategy and are within the broad scope of reasonable professional conduct. *State v. Hendricks*, 2003 MT 223, ¶ 7, 317 Mont.

177, ¶ 7, 75 P.3d 1268, ¶ 7. ¶13 Here, Placzekiewicz does not meet his burden of establishing that Bartlett's actions fell outside the accepted range of professional conduct.

During the postconviction relief hearing, Bartlett testified that he discussed the Keeney dismissal with the prosecution and with Placzekiewicz. Bartlett testified that the cases were consolidated and he and Placzekiewicz were concerned about going to trial because evidence in the first case, DC 04-219, was overwhelming.

Moreover, Bartlett testified that the crime scene in case DC 04-411 had been photographed and documented such that an evidentiary challenge of the kind made in the Keeney case would not have been beneficial to Placzekiewicz. Bartlett also testified that by going to trial Placzekiewicz would "forfeit the argument that we're accepting responsibility" a beneficial posture taken to request leniency during sentencing.

Bartlett discussed this strategy with Placzekiewicz, and Placzekiewicz decided to continue with a plea of guilty. We are convinced that Bartlett's conduct was within the accepted range of attorney conduct and he did not render ineffective assistance of counsel. Consequently, the District Court did not err by dismissing Placzekiewicz's petition for postconviction relief. ¶14 It is appropriate to decide this case pursuant to our Order of February 11, 2003, amending Section I.3 of our 1996 Internal Operating Rules and providing for memorandum opinions.

It is manifest on the face of the briefs and the record before us that the appeal is without merit because the findings of fact are supported by substantial evidence, the legal issues are clearly controlled by settled Montana law which the District Court correctly interpreted, and there was clearly no abuse of discretion by the District Court. ¶15 We affirm the judgment of the District Court.

JUSTICES KARLA M. GRAY, W. WILLIAM LEAPHART, JOHN WARNER, and BRIAN MORRIS, concur.