

SUPREME COURT OF MONTANA

State v. Kruse

2012 MT 112N (Mont. 2012) (Mont. 2012) · No. DA 11-0512 · Decided May 22, 2012

SUMMARY

The Montana Supreme Court affirmed Wendy Kruse’s ten-year sentence for tampering with evidence. The court held that Kruse waived her challenge based on the district court’s alleged failure to consider alternatives to imprisonment because she did not object at sentencing. The sentence was neither illegal nor beyond the statutory maximum.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Michael E. Wheat; Mike McGrath; James C. Nelson; Brian Morris; Jim Rice
JURISDICTION	Montana
DECIDED	May 22, 2012
DOCKET	DA 11-0512
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kruse appealed from a sentencing order imposing the maximum ten-year prison sentence after a jury convicted her of tampering with evidence.
STANDARD OF REVIEW	On direct appeal, issues generally must have been preserved in the district court. An unpreserved sentencing issue may nevertheless be reviewed if the sentence is illegal or exceeds statutory mandates.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Wendy Kruse v. State of Montana

TOPICS

- sentencing
- criminal procedure
- preservation of error
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- appellate procedure

QUESTIONS PRESENTED

1. Whether Kruse preserved for appellate review her claim that the district court failed to consider alternatives to imprisonment under section 46-18-225, MCA.
2. Whether Kruse's ten-year sentence was illegal or exceeded the statutory maximum despite the alleged failure to consider sentencing alternatives.

HOLDINGS

1. Kruse waived her right to challenge the sentence on the ground that the district court failed to consider alternatives to imprisonment because she did not object at the sentencing hearing.
2. Kruse's ten-year sentence was neither illegal nor beyond the statutory authority granted by Montana law.

KEY QUOTATIONS

“Pursuant to Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.” (¶ 1)

“Kruse’s sentence, however, is neither illegal nor does it exceed statutory authority.” (¶ 12)

FACTUAL BACKGROUND

During an investigation into Wendy Kruse's husband's sexual abuse of children, investigators learned that pornographic DVDs, posters, and magazines were kept in the Kruse residence. A search warrant was executed, but nearly all of the described materials were missing. After initially denying that the family possessed pornography, Kruse admitted that she had burned the DVDs and posters and disposed of the magazines. She was convicted of tampering with evidence and received the maximum ten-year sentence, despite having no significant criminal history.

PROCEDURAL HISTORY

Kruse was charged with tampering with evidence, proceeded to a jury trial, and was found guilty. The Eighth Judicial District Court sentenced her to ten years in the Montana State Women's Prison, the statutory maximum. On appeal, she argued that the district court failed to consider alternatives to imprisonment as required by section 46-18-225, MCA, but she had not objected on that ground at sentencing.

DISPOSITION

affirmed

CASES CITED

- In re K.M.G., 2010 MT 81, ¶ 36, 356 Mont. 91, 229 P.3d 1227
- State v. Kotwicki, 2007 MT 17, ¶ 8, 335 Mont. 344, 151 P.3d 892
- State v. Swoboda, 276 Mont. 479, 480-82, 918 P.2d 296, 297-98 (1996)
- State v. Nelson, 274 Mont. 11, 16-20, 906 P.2d 663, 666-68 (1995)

- State v. Lenihan, 184 Mont. 338, 343, 602 P.2d 997, 1000 (1979)

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