

SUPREME COURT OF THE STATE OF MONTANA

State v. Rytky

Rytky, 2006 MT 134 (Supreme Court of the State of Montana 2006) · No. No. 05-444 · Decided June 20, 2006

SUMMARY

The Montana Supreme Court held that Wilbur Eskill Rytky could not appeal an equal protection challenge after entering a conditional guilty plea because the district court had not adversely determined the specified pretrial motion as required by Montana law. The court invalidated the conditional plea and remanded for the district court to vacate the guilty plea, sentence, and judgment and conduct further proceedings.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Chief Justice Karla M. Gray; James C. Nelson; W. William Leaphart; Patricia Cotter; Brian Morris
JURISDICTION	Montana
DECIDED	June 20, 2006
DOCKET	No. 05-444
DISPOSITION	remanded
PROCEDURAL POSTURE	Rytky appealed from a judgment entered after he pleaded guilty to felony deviate sexual conduct and was sentenced to ten years' incarceration. He sought review of an equal-protection challenge to the charging statute under a conditional plea agreement.
STANDARD OF REVIEW	The court did not reach the merits of the constitutional equal-protection issue. It stated that, had the District Court denied the motion to dismiss, the Supreme Court would have reviewed the constitutional issue plenary.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Wilbur Eskill Rytky v. State of Montana

TOPICS

- plea bargaining
- criminal procedure
- appellate procedure
- equal protection
- constitutional law

PRACTICE AREAS

criminal procedure

appellate procedure

constitutional law

plea bargaining

QUESTIONS PRESENTED

1. Whether Rytky's constitutional equal-protection challenge was properly before the Montana Supreme Court after his guilty plea and purported conditional reservation of appellate rights.
2. Whether a defendant may validly reserve appellate review under § 46-12-204(3), MCA, when the trial court has not adversely determined the specified pretrial motion.

HOLDINGS

1. The equal-protection issue was not properly before the Montana Supreme Court because the District Court had not adversely determined Rytky's specified pretrial motion to dismiss.
2. The conditional guilty plea was invalid because the State lacked authority to consent to, and the District Court lacked authority to approve, a reservation of appellate review where no adverse determination of the pretrial motion had occurred.

KEY QUOTATIONS

"We conclude, therefore, that Rytky's conditional plea of guilty is invalid since the State was not authorized to consent to it and the District Court was not authorized to approve it." (¶ 8)

"Remanded with instructions that the District Court vacate the entry of Rytky's guilty plea and sentence, and the judgment entered thereon, and for further proceedings consistent with this opinion." (¶ 10)

FACTUAL BACKGROUND

The State charged Rytky under § 45-5-505, MCA, based on an alleged incident involving a sixteen-year-old male. Rytky pleaded guilty pursuant to an agreement under which the State would not pursue persistent-felony-offender designation and would recommend a five-year sentence. The parties purported to reserve Rytky's right to appeal his equal-protection challenge if the District Court imposed more than five years, but the court imposed a ten-year sentence after never ruling on the pretrial motion.

PROCEDURAL HISTORY

The State charged Rytky with felony deviate sexual conduct and gave notice of its intent to seek persistent-felony-offender designation. Rytky moved to dismiss on equal-protection grounds, but the District Court did not rule on the motion. The parties entered a plea agreement under which Rytky pleaded guilty and purported to reserve the constitutional issue for appeal if sentenced to more than five years. The District Court imposed a ten-year sentence and entered judgment, after which Rytky appealed.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The District Court must vacate the entry of Rytky's guilty plea and sentence, and the judgment entered on them, and conduct further proceedings consistent with the opinion.

CASES CITED

- State v. Samples, 2005 MT 210, ¶ 11, 328 Mont. 242, 119 P.3d 1191
- Ellenburg v. Chase, 2004 MT 66, ¶ 21, 320 Mont. 315, 87 P.3d 473
- State v. Thaut, 2004 MT 359, ¶ 12, 324 Mont. 460, 103 P.3d 1012

OPINION

GRAY, J.

No. 05-444 IN THE SUPREME COURT OF THE STATE OF MONTANA 2006 MT 134 STATE OF MONTANA, Plaintiff and Respondent, v. WILBUR ESKILL RYTKY, Defendant and Appellant APPEAL FROM: District Court of the Eleventh Judicial District, In and For the County of Flathead, Cause No. DC-04-197(A) Honorable Ted O. Lympus, Presiding Judge COUNSEL OF RECORD: For Appellant: Mark R. Sullivan, Attorney at Law, Kalispell, Montana For Respondent: Hon. Mike McGrath, Attorney General; Joslyn M. Hunt, Assistant Attorney General, Helena, Montana Edward J. Corrigan, Flathead County Attorney, Kalispell, Montana Submitted on Briefs: May 17, 2006 Decided: June 20, 2006 Filed: _____

Clerk Chief Justice Karla M. Gray delivered the Opinion of the Court. ¶1 Wilbur Eskill Rytky (Rytky) appeals from the judgment entered by the Eleventh Judicial District Court, Flathead County, on his conviction and sentence for the felony offense of deviate sexual conduct.

The issue raised by Rytky is whether the application of § 45-5-505, MCA, in this case violates his right to equal protection of the laws under the United States and Montana Constitutions. We conclude, however, that we first must determine whether that issue is properly before us.

For the reasons discussed below, we conclude it is not and remand with instructions. ¶2 The dispositive issue is whether Rytky's constitutional equal protection issue is properly before this Court. BACKGROUND ¶3 On May 19, 2004, the State of Montana (State) filed an information charging Rytky with the offense of deviate sexual conduct, a felony, in violation of § 45-5-505, MCA, based on an incident which allegedly occurred between Rytky and a 16-year-old male.

The State also filed its notice of intent to seek a persistent felony offender designation. Rytky pled not guilty and subsequently moved to dismiss the charge against him, asserting that the application of § 45-5-505, MCA, under the facts of this case violated his constitutional right to equal protection of the laws.

The State filed a brief opposing the motion. ¶4 Prior to a ruling on the motion to dismiss, Rytky and the State entered into a written plea agreement whereby Rytky agreed to plead guilty to the

charged offense. In exchange, 2 the State agreed not to pursue the persistent felony offender designation and to recommend that the District Court sentence Rytky to a five-year term of imprisonment in the Montana State Prison (MSP).

During the change of plea hearing, the parties modified the written plea agreement by agreeing that, if the District Court followed the five-year sentencing recommendation, Rytky waived his right to appeal. However, if the District Court refused to follow the plea agreement and sentenced Rytky to more than five years, Rytky reserved his right to appeal the constitutional equal protection issue. ¶5 The District Court accepted Rytky's guilty plea to the charged offense, scheduled a sentencing hearing, and ordered the preparation of a presentence investigation report and a psychosexual evaluation.

At the close of the sentencing hearing, the District Court sentenced Rytky to a 10-year term of incarceration in the MSP, ordered that he be ineligible for parole until he completed all phases of the MSP's sexual offender treatment program and specified various conditions to be imposed should Rytky be paroled.

The District Court entered judgment on the conviction and sentence. Rytky appeals, raising the equal protection issue. DISCUSSION ¶6 Is Rytky's constitutional equal protection issue properly before this Court? ¶7 It is well-established that, generally, a criminal defendant who enters a knowing and voluntary plea of guilty to an offense waives the right to appeal any nonjurisdictional defects and defenses which occurred prior to entry of the plea.

See, e.g., *State v. Samples*, 2005 MT 210, ¶ 11, 328 Mont. 242, ¶ 11, 119 P.3d 1191, ¶ 11 (citing *Ellenburg v. Chase*, 2004 MT 66, 3 ¶ 21, 320 Mont. 315, ¶ 21, 87 P.3d 473, ¶ 21). Notwithstanding this general waiver of the right to appeal, § 46-12-204(3), MCA, provides that [w]ith the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty or nolo contendere, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. ¶8 Here, Rytky filed a pretrial motion to dismiss the charged offense based on constitutional equal protection grounds.

The District Court did not rule on the motion. Rather, Rytky and the State entered into a plea agreement, Rytky pled guilty and was sentenced, and the District Court entered judgment. Although Rytky and the State agreed—and the District Court implicitly approved—that Rytky reserved his right to appeal his conviction on the basis of his constitutional argument if he were sentenced to a term in excess of five years, the District Court did not adversely determine any specified pretrial motion.

As a result, Rytky's reservation of his right to appeal the constitutional issue does not meet the requirements of § 46-12-204(3), MCA. We conclude, therefore, that Rytky's conditional plea of guilty is invalid since the State was not authorized to consent to it and the District Court was not

authorized to approve it. ¶9 We observe that, had the District Court denied Rytky's motion to dismiss and Rytky reserved his right to appeal the denial, we would have plenary review over the constitutional equal protection issue.

See, e.g., *State v. Thaut*, 2004 MT 359, ¶ 12, 324 Mont. 460, ¶ 12, 103 P.3d 1012, ¶ 12. In that regard, judicial economy might suggest that we address the issue raised by Rytky notwithstanding the lack of a ruling by the District Court. Indeed, this might be a valid argument in some circumstances.

Here, however, the State consented to—and the District Court accepted—Rytky's conditional guilty plea without legal authority. It is important to correct this situation, thereby hopefully preventing it from arising again. ¶10 Remanded with instructions that the District Court vacate the entry of Rytky's guilty plea and sentence, and the judgment entered thereon, and for further proceedings consistent with this opinion. /S/ KARLA M. GRAY We concur: /S/ JAMES C. NELSON /S/ W. WILLIAM LEAPHART /S/ PATRICIA COTTER /S/ BRIAN MORRIS 5