

SUPREME COURT OF MONTANA

State v. Rardon

2001 MT 77 (Mont. 2001) · No. No. 00-431 · Decided April 26, 2001

SUMMARY

The Montana Supreme Court remanded the matter to the district court to determine whether appointed counsel should be permitted to withdraw and, if so, to appoint replacement counsel for William Lester Rardon’s direct appeal. The Court held that a criminal defendant has a constitutional right to counsel on direct appeal and that appointed counsel’s obligation continues through the appeal unless the appointing court authorizes withdrawal.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Per Curiam; Karla M. Gray; Jim Rice; W. William Leaphart; Patricia Cotter; Terry N. Triewelier; Jim Regnier
JURISDICTION	Montana
DECIDED	April 26, 2001
DOCKET	No. 00-431
DISPOSITION	remanded
PROCEDURAL POSTURE	Rardon filed a pro se appellate brief requesting appointment of counsel after a resentencing judgment. The Montana Supreme Court treated the filing as a motion for appointment of counsel and remanded to the district court to determine whether appointed counsel should be permitted to withdraw and, if so, to appoint substitute counsel.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion and order; precedential status is not otherwise specified in the opinion text.
PARTIES	William Lester Rardon v. State of Montana

TOPICS

- right to counsel
- appellate procedure
- criminal procedure
- ineffective assistance

PRACTICE AREAS

- criminal procedure
- appellate procedure
- right to counsel
- ineffective assistance

QUESTIONS PRESENTED

1. Whether a criminal defendant is constitutionally entitled to appointed counsel for a direct appeal from resentencing.
2. Whether appointed counsel may terminate representation by filing a notice of termination without an order from the appointing court.
3. What action the district court must take to ensure Rardon has counsel for the appeal.

HOLDINGS

1. A criminal defendant has a constitutional right to counsel on a direct appeal, and an appeal from resentencing ordered on remand is a direct appeal for which the defendant is entitled to counsel.
2. Assigned counsel must continue representing a defendant through final judgment, including proceedings on direct appeal, unless relieved by an order of the court that assigned counsel; filing a notice of termination alone does not satisfy that obligation.
3. The matter must be remanded to the district court to determine whether appointed counsel should be allowed to withdraw and, if withdrawal is approved, to appoint other appropriate counsel; the court may also determine whether Rardon remains indigent and eligible for appointed counsel.

KEY QUOTATIONS

“A criminal defendant has a constitutional right to counsel on a direct appeal.” (¶ 3)

“That obligation of representation was not satisfied by the filing in the district court of a “Notice of Termination of Attorney/Client Relationship” by Rardon’s court-appointed counsel.” (¶ 4)

FACTUAL BACKGROUND

The State charged Rardon with one count of sexual intercourse without consent and two counts of sexual assault. He pleaded guilty to one count of sexual assault, the remaining charges were dismissed, and the district court entered judgment and sentence. After the Montana Supreme Court ordered resentencing, the district court entered a second judgment and sentence; appointed counsel then filed a notice purporting to terminate the attorney-client relationship, after which Rardon filed a pro se appeal.

PROCEDURAL HISTORY

Rardon was charged in the Eleventh Judicial District Court, Flathead County, pleaded guilty to one count of sexual assault under a written plea agreement, and was resentenced after the Montana Supreme Court reversed and remanded the original sentence. After entry of the second judgment and sentence, appointed counsel filed a notice of termination of the attorney-client relationship, and Rardon filed a pro se notice of appeal. The Supreme Court had previously denied appointment of counsel based on the mistaken belief that Rardon was represented, so it remanded for a determination concerning counsel and directed that Rardon receive 30 days to file a new brief after that determination.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The case was remanded to the Eleventh Judicial District Court, Flathead County, to determine whether Rardon's court-appointed counsel should be allowed to withdraw. If withdrawal was approved, the district court was directed to appoint other appropriate counsel and, if necessary, determine Rardon's continuing indigence and eligibility for appointed counsel. After the determination, Rardon was to have 30 days to file a new brief, with further briefing proceeding under the Montana Rules of Appellate Procedure.

CASES CITED

- State v. Black, 245 Mont. 39, 798 P.2d 530 (1990)
- State v. Rardon, 1999 MT 220, 296 Mont. 19, 986 P.2d 424

OPINION

PER CURIAM.

file:///C:/Documents%20and%20Settings/cu1046/Desktop/new/00-431%20(04-26-01)%20Order.htm IN THE SUPREME COURT OF THE STATE OF MONTANA No. 00-431 2001 MT 77 _____ OPINION AND ORDER STATE OF MONTANA) Plaintiff and Respondent, v. WILLIAM LESTER RARDON, Defendant and Appellant. _____ ¶ 1 The Defendant and Appellant in this action, William Lester Rardon, acting pro se, has filed with this Court a document entitled "Appellant's Brief," in which he requests legal counsel for purposes of this appeal.

The State of Montana, through the Attorney General's office, has filed a brief in response. Appellant's Brief is hereby deemed a motion for appointment of counsel. ¶ 2 On March 18, 1997, the State of Montana charged Rardon by Information with one count of sexual intercourse without consent and two counts of sexual assault in the Eleventh Judicial District, Flathead County.

On June 12, 1997, Rardon pled guilty to one count of sexual assault pursuant to a written plea agreement, and the remaining charges were dismissed. The District Court entered judgment and sentence, and this Court subsequently reversed and remanded for re-sentencing in State v. Rardon, 1999 MT 220, file:///C:/Documents%20and%20Settings/cu1046/Desktop/new/00-431%20(04-26-01)%20Order.htm (1 of 3)1/17/2007 4:34:55 PM file:///C:/Documents%20and%20Settings/cu1046/Desktop/new/00-431%20(04-26-01)%20Order.htm 296 Mont.

19, 986 P.2d 424. On April 4, 2000, the Eleventh Judicial District Court entered a second Judgment and Sentence against Rardon. On April 5, 2000, Rardon's court-appointed attorney filed and served Rardon with a Notice of Entry of Judgment and Notice of Termination of

Attorney/Client Relationship, citing Rule 12(f), Eleventh Judicial District Court Rules. There is no indication in the record whether the District Court granted leave for Rardon's court-appointed attorney to withdraw as counsel or whether the court appointed new counsel.

On May 16, 2000, Rardon filed a pro se Notice of Appeal. On July 18, 2000, this Court issued an order denying Rardon's request for appointment of counsel, based upon the mistaken impression, gleaned from his pro se filings, that he was already represented by counsel on appeal. ¶ 3 A criminal defendant has a constitutional right to counsel on a direct appeal.

State v. Black (1990), 245 Mont. 39, 798 P.2d 530. Rardon's appeal herein is made from his re-sentencing in the District Court, ordered on remand by this Court in State v. Rardon, supra, and thus, is a direct appeal for which he is entitled to counsel. ¶ 4 Section 46-8-103, MCA, requires that assigned counsel continue to represent a defendant until final judgment, including any proceeding upon direct appeal to this Court, unless relieved by order of the court that assigned counsel to the case.

That obligation of representation was not satisfied by the filing in the district court of a "Notice of Termination of Attorney/Client Relationship" by Rardon's court-appointed counsel. ¶ 5 The Court notes that Rardon's "Appellant's Brief" appears to allege that he received ineffective assistance of counsel during his re-sentencing by the District Court. Consequently, assumption of representation by the Appellate Defender's Office in this matter may be appropriate pursuant to § 46-8-212, MCA.

Therefore, ¶ 6 IT IS HEREBY ORDERED that this cause is remanded to the Eleventh Judicial District Court, Flathead County, for a determination of whether Rardon's court-appointed counsel should be allowed to withdraw. If withdrawal is approved, the District Court shall enter an order appointing other appropriate counsel to represent Rardon on his appeal. If necessary, the District Court may determine whether Rardon remains eligible by way of indigence for court-appointed counsel. ¶ 7 IT IS FURTHER ORDERED that upon entry of such determination by the District Court, Rardon shall have 30 days in which to file a new brief on appeal.

Thereafter, all briefing will continue pursuant to the Montana Rules of Appellate Procedure, and the State file:///C:/Documents%20and%20Settings/cu1046/Desktop/new/00-431%20(04-26-01)%20Order.htm (2 of 3)1/17/2007 4:34:55 PM file:///C:/Documents%20and%20Settings/cu1046/Desktop/new/00-431%20(04-26-01)%20Order.htm may supplement its brief in response to Appellant's brief if it elects to do so. ¶ 8 The Clerk of the Montana Supreme Court is directed to return the District Court file to the Flathead County Clerk of Court solely for purposes of that court's determination of the above issues.

Immediately after the court enters an order concerning Rardon's appellate counsel, the file shall be returned to the Clerk of this Court for continuation of this appeal. ¶ 9 The Clerk is further directed to provide copies of this Order to counsel of record; to the Honorable Katherine R. Curtis, presiding judge; to Rardon personally the Montana State Prison; and to the Office of the Appellate Defender.

DATED this 26th day of April, 2001. /S/ KARLA M. GRAY /S/ JIM RICE /S/ W. WILLIAM LEAPHART /S/ PATRICIA COTTER /S/ TERRY N. TRIEWEILER /S/ JIM REGNIER
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