

SUPREME COURT OF MONTANA

State v. Bilbeisi

2009 MT 118 · No. DA 08-0345 · Decided April 8, 2009

OPINION

PER CURIAM.

2009 MT 118N STATE OF MONTANA, Plaintiff and Appellee, v. JASON BRANDON BILBEISI, Defendant and Appellant. No. DA 08-0345. Supreme Court of Montana. Submitted on Briefs: March 11, 2009. Decided: April 7, 2009. For Appellant: Kelly J. Varnes; Hendrickson, Everson, Noenning & Woodward, P.C., Billings, Montana.

For Appellee: Hon. Steve Bullock, Montana Attorney General; Matthew T. Cochenour, Assistant Attorney General, Helena, Montana, Dennis Paxinos, Yellowstone County Attorney, Billings, Montana. Chief Justice Mike McGrath 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 its case title, Supreme Court cause number and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports. ¶2 Jason Brandon Bilbeisi appeals from the May 28, 2008 Order and Decision of the Montana Thirteenth Judicial District Court, Yellowstone County, the Hon. Russell Fagg presiding, denying his motion to withdraw his guilty plea to one count of sexual intercourse without consent, a felony.

We affirm. ¶3 Bilbeisi was charged in 2004 with two felony counts of sexual intercourse without consent. In May, 2005, Bilbeisi and the State entered a plea bargain agreement in which he agreed to plead guilty to one count of sexual intercourse without consent and the State agreed to dismiss the other count. Bilbeisi was sentenced in October, 2005 in accordance with the plea agreement.

He did not appeal or seek any other form of post-conviction relief. In September, 2007, Bilbeisi filed a motion to withdraw his guilty plea, contending that his prior attorney should have pursued a motion to dismiss on speedy trial grounds and that the guilty plea was not voluntary because of "psychological" issues. ¶4 Bilbeisi's motion to withdraw his guilty plea is barred by § 46-16-105(2), MCA.

That statute gives a defendant one year after a judgment becomes final in which to move to withdraw a guilty plea, upon a showing of good cause. The only exception to the one-year limitation is "when a claim of innocence is supported by evidence of a fundamental miscarriage of justice." Bilbeisi's motion to withdraw his plea was filed long after the one-year limitation period;

he does not claim innocence; and he has not made any cogent argument that there was a fundamental miscarriage of justice.

Therefore his motion to withdraw his plea is barred by § 46-16-105(2), MCA. ¶5 The District Court also evaluated Bilbeisi's motion under the "good cause" standard and found that he had not established grounds for withdrawing his plea.

The District Court found that the interrogation of Bilbeisi at the time he plead guilty was "quite adequate;" that Bilbeisi had waited over two years to seek relief; that there was a voluntary plea agreement that benefitted Bilbeisi by dismissing a felony charge; and, that the speedy trial motion had been withdrawn as part of the plea agreement.

Therefore, there was no demonstration of good cause under *State v. Warclub*, 2005 MT 149, 327 Mont. 352, 114 P.3d 254 and *State v. Morgan*, 2003 MT 193, 316 Mont. 509, 74 P.3d 1047. Having reviewed the order below and the record, we find that the District Court properly denied Bilbeisi's motion to withdraw his guilty plea. ¶6 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our 1996 Internal Operating Rules, as amended in 2003, which provides for memorandum opinions.

The issues are clearly controlled by settled Montana law. ¶7 Affirmed. JUSTICES JOHN WARNER, W. WILLIAM LEAPHART, BRIAN MORRIS and JIM RICE, concur.