

SUPREME COURT OF THE STATE OF MONTANA

State of Montana v. Joshua J. Twichel

2009 MT 409N (Mont. 2009) · No. DA 09-0258 · Decided November 25, 2009

SUMMARY

The Montana Supreme Court reviewed the denial of Joshua J. Twichel’s motion to withdraw his guilty plea to partner or family member assault. The court held that the district court correctly applied the law and affirmed, concluding that substantial evidence supported its findings and that the alleged failure to advise Twichel of collateral consequences did not warrant withdrawal of the plea.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Brian Morris; Mike McGrath; James C. Nelson; Patricia O. Cotter; Jim Rice
JURISDICTION	Montana
DECIDED	November 25, 2009
DOCKET	DA 09-0258
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed the district court's order affirming the city court's denial of his motion to withdraw his guilty plea.
STANDARD OF REVIEW	The denial of a motion to withdraw a guilty plea on the ground that the plea was involuntary presents mixed questions of law and fact reviewed de novo. Underlying factual findings are reviewed for clear error.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Joshua J. Twichel v. State of Montana

TOPICS

- criminal procedure
- plea bargaining
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the city court's failure to advise Twichel of alleged collateral and other consequences rendered his guilty plea involuntary and required withdrawal of the plea.
2. What standard of review applies to the denial of a motion to withdraw a guilty plea on involuntariness grounds.

HOLDINGS

1. The denial of a motion to withdraw a guilty plea on the ground that the plea was involuntary presents mixed questions of law and fact reviewed de novo, while factual findings relied upon by the court are reviewed for clear error.
2. The denial of Twichel's motion to withdraw his guilty plea was affirmed because substantial evidence supported the District Court's factual findings and the District Court correctly applied the law.

KEY QUOTATIONS

“The denial of a motion to withdraw a guilty plea on the alleged grounds that the plea was involuntary presents mixed questions of law and fact. We review de novo these mixed questions of law and fact.” (¶ 8)

“It is manifest on the face of the briefs and the record before us that substantial evidence supports the District Court’s findings of fact and that the District Court correctly applied the law.” (¶ 8)

FACTUAL BACKGROUND

Billings police arrested Joshua Twichel after an altercation with his pregnant wife in which the charging information alleged that he pushed her down, twisted her arm, and threatened her with a gun. At his initial appearance, Twichel briefly consulted a public defender who advised him to plead not guilty, but Twichel chose to plead guilty because he wanted to return home quickly to support his family. The city court advised him of the direct consequences of the plea but did not discuss collateral consequences such as the effect on his gun rights; it accepted the plea after a brief colloquy and imposed sentence. Three weeks later, Twichel sought to withdraw the plea, alleging inadequate advice concerning gun rights, supervision, and a no-contact order.

PROCEDURAL HISTORY

The Billings City Court accepted Twichel's guilty plea to partner family member assault and imposed sentence. Three weeks later, Twichel moved to withdraw the plea, arguing that he had not been adequately advised of its consequences; the city court denied the motion. The District Court of the Thirteenth Judicial District, Yellowstone County, affirmed, and Twichel appealed to the Montana Supreme Court, which affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Brinson, 2009 MT 200, ¶ 3, 351 Mont. 136, 210 P.3d 164

- State v. McFarland, 2008 MT 18, ¶ 8, 341 Mont. 166, 176 P.3d 1057

OPINION

PER CURIAM.

November 25 2009 DA 09-0258 IN THE SUPREME COURT OF THE STATE OF MONTANA
2009 MT 409N STATE OF MONTANA, Plaintiff and Appellee, v. JOSHUA J. TWICHEL,
Defendant and Appellant. APPEAL FROM: District Court of the Thirteenth Judicial District, In
and For the County of Yellowstone, Cause No. DC 09-0032 Honorable G. Todd Baugh, Presiding
Judge COUNSEL OF RECORD: For Appellant: Brad L. Arndorfer, Arndorfer Law Firm, Billings,
Montana For Appellee: Hon. Steve Bullock, Montana Attorney General; John Paulson, Assistant
Attorney General, Helena, Montana Teague J. Westrope, Deputy City Attorney, Billings, Montana
Submitted on Briefs: October 21, 2009 Decided: November 25, 2009 Filed:
_____ Clerk Justice Brian Morris 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 2006, 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 Appellant Joshua John
Twichel (Twichel) appeals from the District Court's order denying his motion to withdraw his
guilty plea. ¶3 Billings police officers arrested Twichel at his home after he was involved in an
altercation with his pregnant wife.

The City of Billings charged Twichel with partner family member assault. The information alleged
that Twichel pushed his wife to the ground, twisted her arm, and threatened her with a gun during
this encounter. ¶4 Twichel appeared in city court for his initial appearance along with about thirty
other defendants. Twichel had a brief conversation with a public defender who was in the
courtroom.

The public defender advised Twichel to plead not guilty. Twichel contends that he watched other
defendants plead not guilty to partner family member assault and saw the court impose no contact
restrictions with respect to these defendants' partners. Twichel claimed that he was the sole bread
winner for his four children and a fifth on the way. He wanted to get home as quickly as he could.

As a result, Twichel chose to disregard the advice of the public defender and he entered a guilty
plea. 2 ¶5 The city court advised Twichel of the direct consequences of his plea, but the court did
not discuss collateral consequences, such as the loss of Twichel's gun rights. Twichel informed the
court that he understood the consequences of his plea and entered a guilty plea.

The court conducted a brief colloquy in which Twichel admitted to having pushed his wife to the ground and twisted her arm. The court accepted Twichel's guilty plea and imposed a sentence. ¶6 Three weeks later, Twichel sought to withdraw his guilty plea on the basis that he had not been advised adequately of the consequences of pleading guilty.

In particular, Twichel alleged that the city court had failed to advise him that his gun rights would be affected, that his sentence would involve extensive supervision, and that the court would impose a no contact order to protect Twichel's wife.

The city court denied Twichel's motion. ¶7 Twichel appealed to the district court. The District Court affirmed on the grounds that Twichel was under no obligation to enter a guilty plea at his initial appearance and that the city court likely would have provided Twichel with counsel had he requested it.

The court further determined that the city court was under no obligation to inform Twichel of the collateral consequences of his plea, including its affect on his gun rights. Twichel appeals. ¶8 The denial of a motion to withdraw a guilty plea on the alleged grounds that the plea was involuntary presents mixed questions of law and fact.

We review de novo these mixed questions of law and fact. *State v. Brinson*, 2009 MT 200, ¶ 3, 351 Mont. 136, 210 P.3d 164. We review for clear error any factual findings relied upon by the court in reaching its legal conclusion. *State v. McFarland*, 2008 MT 18, ¶ 8, 341 Mont. 166, 176 P.3d 1057.

We have 3 determined to decide this case pursuant to Section I, Paragraph 3(d), of our 1996 Internal Operating Rules, as amended in 2006, that provide for memorandum opinions. It is manifest on the face of the briefs and the record before us that substantial evidence supports the District Court's findings of fact and that the District Court correctly applied the law. ¶9 Affirmed.
/S/ BRIAN MORRIS We Concur: /S/ MIKE McGRATH /S/ JAMES C. NELSON /S/ PATRICIA O. COTTER /S/ JIM RICE 4