

SUPREME COURT OF THE STATE OF MONTANA

State v. Weinberger

2005 MT 160N (Mont. 2005) · No. No. 05-033 · Decided June 28, 2005

SUMMARY

The Montana Supreme Court held that a sentencing condition banishing Arrow Weinberger from Roosevelt County was illegal because it did not reasonably relate to rehabilitation or protection of the victim and society. The court reversed and remanded for resentencing without the improper banishment provision.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Brian Morris; Karla M. Gray; John Warner; James C. Nelson; W. William Leaphart
JURISDICTION	Montana
DECIDED	June 28, 2005
DOCKET	No. 05-033
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed the denial of his motion to modify the banishment condition in his criminal judgment.
STANDARD OF REVIEW	The court reviews the terms and conditions of a criminal sentence for legality only. A sentence that exceeds statutory mandates or is illegal may be reviewed even absent an objection at sentencing.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Arrow Weinberger v. State of Montana

TOPICS

- sentencing
- criminal procedure
- appellate procedure
- remedies
- standard of review

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether the District Court's criminal-sentencing condition prohibiting Weinberger from being in Roosevelt County without court or sheriff permission constituted illegal banishment.

HOLDINGS

1. A banishment condition in a criminal sentence is illegal unless it reasonably relates to the objectives of rehabilitation and protection of the victim and society; the condition imposed on Weinberger was improper and had to be removed.

KEY QUOTATIONS

“A banishment condition in a criminal sentence is illegal unless it reasonably relates to the objectives of rehabilitation and the protection of the victim and society.” (¶ 5)

FACTUAL BACKGROUND

Weinberger was convicted of deliberate homicide and received a sentence containing a condition prohibiting him from being in Roosevelt County without notice or permission of the court or county sheriff. The condition allowed his presence only for the serious illness or death of a member of his own family. Weinberger challenged the condition as an improper banishment, and the State conceded that the District Court had erred.

PROCEDURAL HISTORY

The Fifteenth Judicial District Court in Roosevelt County entered a judgment for deliberate homicide that prohibited Weinberger from being in Roosevelt County without notice or permission of the court or county sheriff, except for serious illness or death of an immediate family member. The District Court denied Weinberger's motion to modify that condition. The Montana Supreme Court reversed and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for resentencing that removes the improper banishment provision.

CASES CITED

- State v. Montoya, 1999 MT 180, ¶ 15, 295 Mont. 288, 983 P.2d 937
- State v. Brister, 2002 MT 13, ¶ 12, 308 Mont. 154, 41 P.3d 314
- State v. Muhammad, 2002 MT 47, 309 Mont. 1, 43 P.3d 318

OPINION

State v. Weinberger

2005 MT 160N

PER CURIAM.

No. 05-033

IN THE SUPREME COURT OF THE STATE OF MONTANA

2005 MT 160N

STATE OF MONTANA,

Plaintiff and Respondent, v.

ARROW WEINBERGER,

Defendant and Appellant. APPEAL FROM: District Court of the Fifteenth Judicial District, In and for the County of Roosevelt, Cause No. DC 1035-C, The Honorable David G. Cybulski, Judge presiding. COUNSEL OF RECORD: For Appellant: Edmund F. Sheehy, Jr., Cannon & Sheehy, Helena, Montana For Respondent: Hon. Mike McGrath, Attorney General; Jennifer Anders, Assistant Attorney General, Helena, Montana Fred J. Hofman, Roosevelt County Attorney, Wolf Point, Montana Submitted on Briefs: June 14, 2005 Decided: June 28, 2005 Filed:

Clerk Justice Brian Morris delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent but shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court. ¶2 Appellant Arrow Weinberger (Weinberger) appeals from the denial of his motion to modify that portion of his judgment for deliberate homicide entered by the Fifteenth Judicial District Court, Roosevelt County, that prohibits him from being in Roosevelt County without notice or permission of the court or county sheriff, and then only for serious illness or death of a member of his own family. We reverse. ¶3 We must determine whether the District Court improperly banished Weinberger from Roosevelt County. We review the terms and conditions of a criminal sentence for legality only. *State v. Montoya*, 1999 MT 180, ¶ 15, 295 Mont. 288, ¶ 15, 983 P.2d 937, ¶ 15. We review a criminal sentence that exceeds statutory mandates or is illegal even if no objection is made at the time of sentencing. *State v. Brister*, 2002 MT 13, ¶ 12, 308 Mont. 154, ¶ 12, 41 P.3d 314, ¶ 12. ¶4 We have determined to decide this case pursuant to our Order dated February 11, 2003, amending Section 1.3 of our 1996 Internal Operating Rules and providing for memorandum opinions. ¶5 A banishment condition in a criminal sentence is illegal unless it reasonably relates to the objectives of rehabilitation and the protection of the victim and society. *State v. 2 Muhammad*, 2002 MT 47, 309 Mont. 1, 43 P.3d 318. Weinberger argues and the State concedes that the District Court improperly banished him from Roosevelt County. On the face of the briefs and the record on appeal before us, it remains manifest that the District Court erred when it prohibited Weinberger from being in Roosevelt County without notice or permission of the court or county sheriff, and then only for serious illness or death of a member of his own family. ¶6 We therefore reverse the judgment of the District Court and remand for resentencing that removes the improper banishment

provision.

/S/ BRIAN MORRIS

We Concur:

/S/ KARLA M. GRAY

/S/ JOHN WARNER

/S/ JAMES C. NELSON

/S/ W. WILLIAM LEAPHART

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