

SUPREME COURT OF MONTANA

State v. Hood

182 P.3d 762 (Mont. 2008) · No. DA 07-0100 · Decided March 4, 2008

SUMMARY

The Montana Supreme Court affirmed a restitution condition requiring Richard Hood to pay more than \$92,000 following his arson conviction. The court held that Hood’s challenges were unpreserved, his due process claim was premature, the restitution was statutorily authorized, and plain-error review was unwarranted.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Karla M. Gray, Chief Justice; W. William Leaphart, Justice; John Warner, Justice; Patricia Cotter, Justice; Brian Morris, Justice
JURISDICTION	Montana
DECIDED	March 4, 2008
DOCKET	DA 07-0100
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed a restitution condition imposed as part of sentencing following his arson conviction.
STANDARD OF REVIEW	Sentencing issues generally are not reviewed on appeal when the defendant failed to object in the district court. Plain-error review is discretionary and is applied sparingly under narrow criteria.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Richard Hood v. State of Montana

TOPICS

- restitution criminal
- sentencing
- preservation of error
- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- appellate practice

QUESTIONS PRESENTED

1. Whether Hood's challenge to the restitution condition was preserved for appellate review when he made no objection in the district court.
2. Whether the restitution condition was illegal because it allegedly exceeded statutory authority.
3. Whether the restitution condition constituted an unconstitutionally excessive fine.
4. Whether the restitution condition violated due process by requiring payment at a rate greater than Hood could reasonably bear.
5. Whether the court should exercise plain-error review.

HOLDINGS

1. A defendant generally may not obtain appellate review of a sentencing issue that was not raised in the district court by objection.
2. The restitution ordered in Hood's case was within statutory parameters because restitution was statutorily required.
3. Hood's claims did not fall within the *State v. Lenihan* exception to the preservation requirement for sentencing challenges.
4. Hood's due-process claim was premature because the record did not show that his suspended sentence had been revoked for failure to pay restitution despite good-faith efforts.
5. The court declined to exercise plain-error review because the narrow criteria for invoking that inherent power were not present.

KEY QUOTATIONS

“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.” (¶ 1)

“Finally, we decline to exercise plain error review because we use that inherent power sparingly and only under narrow criteria not present here.” (¶ 6)

FACTUAL BACKGROUND

Richard Hood was convicted of arson. As a sentencing condition, the district court ordered him to pay more than \$92,000 in restitution. Hood made no objection to the restitution condition in the district court and later challenged it on appeal, including on statutory, excessive-fine, and due-process grounds.

PROCEDURAL HISTORY

Hood was convicted of arson in the Eighth Judicial District Court, Cascade County. The district court imposed a sentencing condition requiring more than \$92,000 in restitution. Hood raised statutory, constitutional, and due-process challenges for the first time on appeal. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Kotwicki, 2007 MT 17, ¶ 8, 335 Mont. 344, 151 P.3d 892
- State v. Kotwicki, 2007 MT 17, ¶ 16, 335 Mont. 344, 151 P.3d 892
- State v. Lenihan, 184 Mont. 338, 602 P.2d 997 (1979)
- State v. Upshaw, 2006 MT 341, ¶ 12, 335 Mont. 162, 153 P.3d 579

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