

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PRECEDENTIAL VALUE	nonprecedential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 Hood's due-process claim was premature because the record did not show that his suspended sentence had been revoked for failure to pay restitution despite good-faith efforts.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

OPINION

PER CURIAM.

2008 MT 78N STATE OF MONTANA, Plaintiff and Appellee, v. RICHARD HOOD, Defendant and Appellant. No. DA 07-0100 Supreme Court of Montana. Submitted on Briefs: January 16, 2008 Decided: March 4, 2008 For Appellant: Jim Wheelis, Chief Appellate Defender; Shannon L. McDonald Assistant Appellant Defender, Helena, Montana For Appellee: Hon. Mike McGrath, Attorney General; Mark Mattioli, Assistant Attorney General, Helena, Montana, Brant Light, Cascade County Attorney; Joel Thompson, Deputy County Attorney, Great Falls, Montana Chief Justice Karla M. Gray 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 Richard Hood appeals from a restitution sentencing condition imposed following his conviction of the offense of arson in the Eighth Judicial District Court, Cascade County.

We affirm. ¶3 Hood argues the sentencing condition requiring him to pay over \$92,000 in restitution (1) is illegal under applicable statutes, (2) is an unconstitutionally excessive fine for which he seeks plain error review, and (3) violates his right to due process because one cannot be required to pay restitution at a rate greater than one can reasonably bear. ¶4 Hood's arguments on appeal were not raised in the District Court.

Indeed, no objections were made to the restitution condition. ¶5 Generally, we refuse to review a sentencing issue on appeal when the defendant failed to raise the issue in district court via an objection. State v. Kotwicki, 2007 MT 17, ¶ 8, 335 Mont. 344, ¶ 8, 151 P.3d 892, ¶ 8 (citation omitted). Hood's due process claim is, moreover, premature, because nothing of record indicates Hood's suspended sentence has been revoked for failure to pay restitution despite his good faith efforts. ¶6 Restitution was statutorily required in this case and, therefore, the restitution Hood was ordered to pay is within statutory parameters.

The other claimed errors do not go to the legality of the sentence, but only to alleged statutory errors. See Kotwicki, ¶ 16. Thus, Hood's claims are not within the State v. Lenihan, 184 Mont. 338, 602 P.2d 997 (1979), exception to the requirement that claims for review of a sentencing issue must first have been raised in the district court by way of an objection.

Finally, we decline to exercise plain error review because we use that inherent power sparingly and only under narrow criteria not present here. See State v. Upshaw, 2006 MT 341, ¶ 12, 335 Mont. 162, ¶ 12, 153 P.3d 579, ¶ 12 (citation omitted). ¶7 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. ¶8 Affirmed. JUSTICES W. WILLIAM LEAPHART, JOHN WARNER, PATRICIA COTTER, and BRIAN MORRIS, concur.