

SUPREME COURT OF MONTANA

State v. Lionel Scott Ellison

2009 MT 408N (2009) · No. DA 09-0305 · Decided November 25, 2009

SUMMARY

The Montana Supreme Court affirmed the denial of Lionel Scott Ellison’s motion to withdraw his Alford plea to felony arson. The court held that neither defense counsel, the district court, nor the prosecutor misrepresented the possibility of a deferred sentence, and therefore Ellison failed to show good cause under Montana law for withdrawing his plea. The opinion was issued as a noncitable memorandum decision.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	W. William Leaphart; Mike McGrath; James C. Nelson; Brian Morris; Jim Rice
JURISDICTION	Montana
DECIDED	November 25, 2009
DOCKET	DA 09-0305
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ellison appealed the Yellowstone County District Court's denial of his motion to withdraw an Alford plea to felony arson.
STANDARD OF REVIEW	The denial of a motion to withdraw a guilty plea is reviewed de novo; underlying factual findings are reviewed for clear error; and the district court's interpretation and application of law are reviewed for correctness.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision; expressly designated not citable as precedent under the Montana Supreme Court's Internal Operating Rules.
PARTIES	Lionel Scott Ellison v. State of Montana

TOPICS

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

PRACTICE AREAS

criminal procedure

plea withdrawal

sentencing

QUESTIONS PRESENTED

1. Whether the District Court erred by denying Ellison's motion to withdraw his Alford plea on the ground that the plea was induced by misrepresentations concerning the possibility of a deferred sentence.

HOLDINGS

1. Ellison did not demonstrate good cause under § 46-16-105(2), MCA, because neither defense counsel, the District Court, the prosecutor, nor any other relevant party misrepresented that Ellison was entitled to or guaranteed a deferred sentence.

KEY QUOTATIONS

“At any time before judgment or . . . within one year after judgment becomes final, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted.” (¶ 9)

“Simply put, none of the relevant parties in this case misrepresented to Ellison that he was entitled to a deferred sentence.” (¶ 13)

FACTUAL BACKGROUND

Ellison was charged with felony arson after a car belonging to Deane Ames caught fire while Ellison was driving it. He entered an Alford plea under an agreement providing that the State would recommend a five-year suspended sentence while allowing him to argue for a lesser sentence, including a deferred imposition of sentence. After changing counsel, Ellison moved to withdraw the plea, asserting that he had been misled about the availability of a deferred sentence, but the District Court found no misrepresentation and denied the motion.

PROCEDURAL HISTORY

Ellison was charged with felony arson, entered an Alford plea pursuant to a plea agreement, and later moved to withdraw the plea based on alleged misrepresentations concerning the possibility of a deferred sentence and other asserted grounds. The District Court denied the motion and sentenced him to five years in the Montana State Prison, all suspended. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Deserly, 2008 MT 242, 344 Mont. 468, 188 P.3d 1057
- State v. Jones, 2008 MT 331, 346 Mont. 173, 194 P.3d 86
- State v. Brinson, 2009 MT 200, ¶ 3, 351 Mont. 136, 210 P.3d 164

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

OPINION

PER CURIAM.

November 25 2009 DA 09-0305 IN THE SUPREME COURT OF THE STATE OF MONTANA
2009 MT 408N STATE OF MONTANA, Plaintiff and Appellee, v. LIONEL SCOTT ELLISON,
Defendant and Appellant. APPEAL FROM: District Court of the Thirteenth Judicial District, In
and For the County of Yellowstone, Cause No. DC 07-907 Honorable Susan P. Watters, Presiding
Judge COUNSEL OF RECORD: For Appellant: Herman A. Watson, III, Attorney at Law;
Bozeman, Montana For Appellee: Hon. Steve Bullock, Montana Attorney General; John Paulson,
Assistant Attorney General; Helena, Montana Dennis Paxinos, Yellowstone County Attorney;
Scott Twito, Deputy County Attorney; Billings, Montana Submitted on Briefs: October 28, 2009
Decided: November 25, 2009 Filed: _____ Clerk
Justice W. William Leaphart 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 Lionel Scott
Ellison (Ellison) appeals from the order of Thirteenth Judicial District Court, Yellowstone County,
denying his motion to withdraw his Alford plea. ¶3 The issue on appeal is as follows: ¶4 1.

Did the District Court err when it denied Ellison's motion to withdraw his Alford plea. ¶5 On
October 23, 2007, Ellison was charged by Information with the offense of felony arson in violation
of § 45-6-103(1)(a), MCA.

The charge arose out of an incident in May 2007, when a car, belonging to Deane Ames, started on
fire while Ellison was driving. On April 1, 2008, Ellison appeared with his attorney, Jeffrey G.
Michael (Michael), and entered an Alford plea to the arson charge before district court judge, the
Honorable Russell C. Fagg. Ellison filed an Acknowledgement of Waiver of Rights by Plea of
Alford, which indicated that, pursuant to a plea agreement, the State would recommend a five-year
suspended sentence but that Ellison could still argue for a lesser sentence, including a deferred
imposition of sentence.

Sentencing was then set for 2 May 29, 2008, but reset after the District Court learned that Ellison
had terminated Michael and retained replacement counsel. Subsequently, Ellison filed his motion
to withdraw the plea arguing that there was new exculpatory evidence, that his plea had been
induced by the prosecutor's threat to charge him and his mother with witness tampering and that
the State had lost potentially exculpatory evidence.

On November 28, 2008, Ellison filed an addendum brief in support of his motion, arguing that he was involuntarily induced to plead guilty based on a misrepresentation that he could receive a deferred sentence. On May 5, 2009, the District Court issued its order denying Ellison's motion to withdraw his plea reasoning that Ellison had been fully aware of the direct consequences of his decision to enter a guilty plea.

On May 26, 2009, the District Court followed up its denial of Ellison's motion by sentencing him to five years, all suspended in Montana State Prison. Additional facts are discussed below as relevant. ¶6 On appeal, Ellison argues that the District Court erred in denying his motion to withdraw his plea. Analogizing to *State v. Deserly*, 2008 MT 242, 344 Mont.

468, 188 P.3d 1057 and *State v. Jones*, 2008 MT 331, 346 Mont. 173, 194 P.3d 86, Ellison argues that his guilty plea was involuntary and induced by the misrepresentation that a deferred sentence was possible. Ellison asserts that § 46-18-201(1)(b), MCA, prohibits a deferred sentence for persons who have been convicted of a felony on a prior occasion, and that misrepresentations to the contrary made by his former attorney, Michael, the prosecutor and the presiding judge render Ellison's plea subject to withdrawal under § 46-16-105(2), MCA.

3 ¶7 The State counters that § 46-18-201(1)(b), MCA, does not absolutely prohibit the district court from deferring the imposition of Ellison's sentence. The State argues that since Michael had successfully argued the inapplicability of § 46-18-201(1)(b), MCA, on behalf of other clients with felony convictions from other jurisdictions, there was nothing misleading about his advising Ellison that such an argument could be made in Ellison's case.

In short, the State asserts that since Michael advised Ellison that "it was not very likely that he was going to get a deferred sentence..." Ellison's guilty plea was not induced by misrepresentation. ¶8 We review a district court's denial of a motion to withdraw a guilty plea de novo. *State v. Brinson*, 2009 MT 200, ¶ 3, 351 Mont. 136, 210 P.3d 164. A district court's underlying factual findings are reviewed for clear error.

State v. McFarlane, 2008 MT 18, ¶ 8, 341 Mont. 166, 176 P.3d 1057. A district court's interpretation of the law and application of the law to the facts are reviewed for correctness. *McFarlane*, ¶ 8. ¶9 In relevant part § 46-16-105(2), MCA, provides that: At any time before judgment or... within one year after judgment becomes final, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted. ¶10 Under this statutory scheme "good cause" is shown if a defendant demonstrates that, at the time he entered his plea, he was induced to do so based on misrepresentations by the court, the prosecutor, the defense counsel or some other party.

Brinson, ¶ 8. As such, the first step in our inquiry into whether a defendant is entitled to withdraw his Alford plea is whether the court, the prosecutor, the defense counsel or any other party 4 made

misrepresentations to the defendant.

Here, we determine that no misrepresentations were made. ¶11 First, Ellison’s defense attorney did not represent to Ellison that a deferred sentence was guaranteed. Michael’s testimony evidences the fact that he informed Ellison that a deferred sentence was unlikely given his felony conviction in Wyoming.

Although, despite the limiting language of § 46-18-201(1)(b), MCA, Michael had successfully obtained deferred sentences for clients with prior felonies from other jurisdictions, he forewarned Ellison that such a sentence was only a remote possibility. This advice does not amount to a misrepresentation—it does not constitute “good cause” for withdrawing a plea. ¶12 Second, the District Court did not misrepresent that a deferred sentence was promised, or even possible.

During the plea colloquy, the District Court explained that “you may argue for a less[er] sentence, including a deferred sentence....” This statement only represents that, under the plea, Ellison was permitted to make arguments in favor of a lesser sentence.

Thus, the District Court’s statements do not rise to the level of “good cause” for allowing the withdrawal of Ellison’s Alford plea. ¶13 Finally, neither the prosecutor nor any other party made misrepresentations regarding the possibility of a deferred sentence. Ellison’s argument that the prosecutor “acquiesced in the illusory deferred sentence by the terms of the plea agreement...” is not a tenable argument in this instance.

Simply put, none of the relevant parties in this case misrepresented to Ellison that he was entitled to a deferred sentence. Consequently, we conclude that the District Court properly denied Ellison’s motion to withdraw his plea. ¶14 Having reviewed the record, the District Court’s decision and the parties’ arguments on appeal, we have determined to decide this case pursuant to Section I, Paragraph 3(d) of our 1996 Internal Operating Rules, as amended in 2006, which provides for memorandum opinions.

It is manifest on the face of the briefs and the record before us that the appeal is without merit because the findings of fact are supported by substantial evidence, the legal issues are clearly controlled by settled Montana law which the District Court correctly interpreted, and the record supports the District Court’s denial of Ellison’s motion to withdraw his plea. ¶15 Affirmed. /S/ W. WILLIAM LEAPHART We concur: /S/ MIKE McGRATH /S/ JAMES C. NELSON /S/ BRIAN MORRIS /S/ JIM RICE 6