

SUPREME COURT OF THE STATE OF MONTANA

State v. Bjarko

2003 MT 37N · No. No. 01-398 · Decided March 6, 2003

SUMMARY

The Montana Supreme Court affirmed the revocation of Bradley Bjarko's suspended sentence following parole violations. The Court upheld his level 3 sexual-offender risk designation, concluding that the district court properly reviewed the evaluation materials and that its failure to designate Bjarko as a sexually violent predator was nonprejudicial.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	James C. Nelson; Patricia Cotter; Terry N. Trieweiler; Jim Rice; W. William Leaphart
JURISDICTION	Montana
DECIDED	March 6, 2003
DOCKET	No. 01-398
DISPOSITION	affirmed
PROCEDURAL POSTURE	Bradley Bjarko appealed from the District Court's order revoking the remaining suspended portion of his sentence after a parole violation and committing him to the Department of Corrections for two years.
STANDARD OF REVIEW	The court applied the statutory prejudice standard for trial-court error, requiring reversal only when the record shows prejudice to the convicted person.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Bradley Bjarko v. State of Montana

TOPICS

- sentencing
- parole
- criminal procedure
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- parole revocation
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the District Court erred by declining to designate Bjarko as a level 2 rather than level 3 sexual-offender risk.
2. Whether the District Court's failure to separately designate Bjarko as a sexually violent predator required reversal of the sentence revocation order.

HOLDINGS

1. Section 46-23-509(3)(a), MCA, requires the sentencing court to review the sexual-offender evaluation report but does not require the court to follow it. The statute also does not require specific findings on each of the three indicators associated with a level 3 designation.
2. The District Court's failure to designate Bjarko as a sexually violent predator, although required for a level 3 offender under the statute, was not grounds for reversal because the error did not prejudice Bjarko.

KEY QUOTATIONS

“nothing in § 46-23-509(3)(a), MCA, requires a sentencing court to mandatorily abide by the sexual offender evaluation report; rather, the court is directed to "review" the report.” (¶ 7)

“A cause may not be reversed by reason of any error committed by the trial court against the convicted person unless the record shows that the error was prejudicial.” (¶ 10)

FACTUAL BACKGROUND

Bjarko pleaded guilty to two felony sexual assaults and received concurrent ten-year sentences with five years suspended. He failed to complete court-ordered sex-offender treatment, later violated parole, and absconded immediately after release. The District Court retained his level 3 sexual-offender risk designation, citing his criminal history, untreated status, treatment-related misconduct, and failure to comply with probation conditions.

PROCEDURAL HISTORY

Bjarko pleaded guilty in 1997 to two counts of felony sexual assault and received concurrent ten-year sentences with five years suspended. Part of the suspended sentence was revoked in 1999, and that judgment was affirmed in a prior noncitable decision. After Bjarko violated parole, the District Court revoked the remaining suspended sentence and declined to alter his level 3 sexual-offender designation; the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Bjarko, 2000 MT 387N, 303 Mont. 540, 18 P.3d 1033

