

SUPREME COURT OF THE STATE OF MONTANA

State v. Whitegrass

2016 MT 337N (2016) · No. DA 15-0730 · Decided December 27, 2016

SUMMARY

The Montana Supreme Court affirmed Garrett Lee Whitegrass’s conviction for felony sexual intercourse without consent. The court held that trial counsel was not ineffective for failing to request a continuance to pursue renewed plea negotiations after disclosure of a recording, discovery concerning a condom, and cell-phone text messages. The court concluded that Whitegrass’s arguments were speculative and did not establish deficient performance under *Strickland v. Washington*.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Mike McGrath, Chief Justice; Mike McGrath; Michael E. Wheat; James Jeremiah Shea; Beth Baker; Laurie McKinnon
JURISDICTION	Montana
DECIDED	December 27, 2016
DOCKET	DA 15-0730
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from a felony sexual-intercourse-without-consent conviction, involving a claim of ineffective assistance of counsel.
STANDARD OF REVIEW	Ineffective-assistance claims are evaluated under <i>Strickland v. Washington</i> : the defendant must show objectively deficient performance and resulting prejudice.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion; expressly designated noncitable.
PARTIES	Garrett Lee Whitegrass v. State of Montana

TOPICS

ineffective assistance plea bargaining criminal procedure appellate procedure evidence

PRACTICE AREAS

criminal defense criminal procedure appellate practice ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether trial counsel rendered ineffective assistance by failing to request a continuance during trial to seek renewed plea negotiations after the State produced a recording shortly before trial and additional evidence emerged during trial.

HOLDINGS

1. Whitegrass failed to establish ineffective assistance of counsel because he did not show that counsel's performance fell outside the wide range of reasonable professional assistance or that a continuance would probably have produced a plea offer he would have accepted.

KEY QUOTATIONS

“There is a strong presumption that the attorney’s performance fell within the wide range of reasonable professional assistance, Whitlow, ¶ 15, because there are “countless ways to provide reasonable assistance in any given case.”” (¶ 11)

“Whitegrass has only speculated that a continuance would be granted during trial and that it would result in a new plea offer that he would have accepted. This is insufficient to demonstrate ineffective assistance of counsel.” (¶ 15)

FACTUAL BACKGROUND

In December 2014, a jury convicted Whitegrass of felony sexual intercourse without consent after evidence showed that the victim had suffered severe injuries. Shortly before trial, the State produced a recording of a telephone conversation in which Whitegrass made potentially incriminating statements, and during trial the court considered evidence involving a condom and text messages between Whitegrass and the victim. Whitegrass argued that counsel should have sought a continuance to re-engage the State in plea negotiations, but the record showed that he had rejected an earlier offer and that his alleged prejudice depended on speculation that a continuance and a new acceptable offer would have resulted.

PROCEDURAL HISTORY

A Cascade County jury convicted Whitegrass of felony sexual intercourse without consent. After trial, the District Court appointed new counsel for post-trial proceedings and held an evidentiary hearing on Whitegrass's motion to enforce a rejected plea offer. The District Court denied relief and sentenced Whitegrass to a lengthy prison term. Whitegrass appealed his conviction, arguing that trial counsel was ineffective for failing to request a continuance to pursue renewed plea negotiations after late-produced evidence and other developments at trial.

DISPOSITION

affirmed

CASES CITED

- Strickland v. Washington, 466 U.S. 668 (1984)

- Whitlow v. State, 2008 MT 140, 343 Mont. 90, 183 P.3d 861

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