

SUPREME COURT OF MONTANA

State v. Burch, 342 Mont. 499

182 P.3d 66, 2008 MT 118 (2008) · No. DA 07-0308 · Decided April 9, 2008

SUMMARY

The Montana Supreme Court affirmed the revocation of Kenneth Edward Burch’s suspended sentence for sexual assault based on violations of conditions concerning lawful conduct and pornography. The court held that sentencing judges generally lack authority to impose parole conditions absent specific statutory authorization, but may impose conditions on a suspended sentence and may revoke that sentence before the suspended term begins.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Montana                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Patricia O. Cotter; Karla M. Gray; James C. Nelson; Jim Rice; Brian Morris                                                                                                                                                                                                        |
| JURISDICTION          | Montana                                                                                                                                                                                                                                                                           |
| DECIDED               | April 9, 2008                                                                                                                                                                                                                                                                     |
| DOCKET                | DA 07-0308                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Burch appealed the Twelfth Judicial District Court's order revoking the suspended portion of his sentence for sexual assault based on violations occurring while he was on parole.                                                                                                |
| STANDARD OF REVIEW    | The legality of a criminal sentence is reviewed to determine whether it falls within statutory parameters. Revocation of a suspended sentence is reviewed for abuse of discretion and whether the decision is supported by a preponderance of the evidence in favor of the State. |
| PRECEDENTIAL VALUE    | Published Montana Supreme Court opinion; binding precedent in Montana.                                                                                                                                                                                                            |
| PARTIES               | Kenneth Edward Burch v. State of Montana                                                                                                                                                                                                                                          |

TOPICS

- parole
- sentencing
- probation
- statutory interpretation
- standard of review

## PRACTICE AREAS

Criminal law

Sentencing

Parole and probation

Appellate procedure

## QUESTIONS PRESENTED

1. Whether a sentencing judge has general or residual statutory authority to impose conditions on a defendant's parole.
2. Whether the District Court had authority to revoke Burch's suspended sentence before he began serving the suspended portion of the sentence.

## HOLDINGS

1. A sentencing judge may impose only those parole conditions specifically and explicitly authorized by statute; the sentencing statutes do not confer general or residual authority to impose parole conditions.
2. The District Court may revoke a suspended sentence before the defendant actually begins serving the suspended portion, and it did not abuse its discretion in revoking Burch's sentence.

## KEY QUOTATIONS

*“Although we conclude that sentencing judges do not have a general or residual authority to impose parole conditions, one of the parole conditions imposed by the District Court in this case was nevertheless within its statutory authority.”* (342 Mont. at 513, 182 P.3d at 74, ¶ 30)

*“We hold that sentencing judges have only the power to impose those parole conditions which are specifically and explicitly authorized by statute.”* (342 Mont. at 515, 182 P.3d at 74, ¶ 36)

## FACTUAL BACKGROUND

Burch pleaded guilty to sexual intercourse without consent, criminal sale of dangerous drugs, and sexual assault. He received a sixteen-year sentence for sexual assault, with the final eight years suspended subject to nineteen conditions, including restrictions on pornography and compliance with law. While on parole, Burch was alleged to have written bad checks to his sex-offender treatment provider, been terminated from treatment, and used a work computer to view pornography. The District Court found that he violated conditions of his suspended sentence and revoked the suspension.

## PROCEDURAL HISTORY

Burch pleaded guilty to several felonies and received a sixteen-year sentence for sexual assault, with the final eight years suspended subject to conditions. After he was paroled, the State petitioned to revoke the suspended sentence based on alleged violations involving bad checks, termination from sex-offender treatment, internet use, and pornography. Following an evidentiary hearing, the District Court found violations by a preponderance of the evidence, revoked the suspended sentence, and ordered Burch to serve the remainder of the sixteen-year sentence. The Montana Supreme Court affirmed.

## DISPOSITION

affirmed

#### CASES CITED

- State v. Hicks, 2006 MT 71, 331 Mont. 471, 133 P.3d 206
- State v. Ruiz, 2005 MT 117, 327 Mont. 109, 112 P.3d 1001
- State v. Vallier, 2000 MT 225, 301 Mont. 228, 8 P.3d 112
- State v. Bourne, 259 Mont. 274, 856 P.2d 222 (1993)
- State v. Klippenstein, 239 Mont. 42, 778 P.2d 892 (1989)
- State v. Todd, 257 Mont. 321, 849 P.2d 175 (1993)
- State v. Kroll, 2004 MT 203, 322 Mont. 294, 95 P.3d 717
- Pena v. State, 2004 MT 293, 323 Mont. 347, 100 P.3d 154
- State v. Nelson, 1998 MT 227, 291 Mont. 15, 966 P.2d 133
- Gamble v. Sears, 2007 MT 131, 337 Mont. 354, 160 P.3d 537
- Orr v. State, 2004 MT 354, 324 Mont. 391, 106 P.3d 100