

SUPREME COURT OF MONTANA

City of Billings v. Albert

2009 MT 63, 349 Mont. 400 (2009) · No. DA 08-0140 · Decided March 4, 2009

SUMMARY

The Supreme Court of Montana affirmed Charles Eugene Albert's convictions for two violations of the Billings Municipal City Code involving storage of salvage. The court held that the ordinance was not unconstitutionally vague as applied, that Albert was not denied effective assistance of counsel, that sufficient evidence supported the convictions, and that his suspended sentence and cleanup condition were legal.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Mike McGrath; John Warner; W. William Leaphart; Jim Rice; James C. Nelson
JURISDICTION	Montana
DECIDED	March 4, 2009
DOCKET	DA 08-0140
DISPOSITION	affirmed
PROCEDURAL POSTURE	Albert appealed to the Montana Supreme Court from the Thirteenth Judicial District Court's order affirming his municipal-court convictions and sentences for two violations of the Billings Municipal City Code.
STANDARD OF REVIEW	Constitutional questions are reviewed plenary and de novo. Ineffective-assistance claims are mixed questions of fact and law reviewed de novo. Denial of a motion to dismiss for insufficient evidence is reviewed de novo. A criminal sentence is reviewed for legality only.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Charles Eugene Albert v. City of Billings

TOPICS

- ordinances
- void for vagueness
- due process
- ineffective assistance
- criminal procedure

PRACTICE AREAS

municipal law

constitutional law

criminal procedure

appellate procedure

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether BMCC 27-601(g), prohibiting permanent open storage of salvage, inoperable vehicles, rubbish, or other chattel, was unconstitutionally vague as applied to Albert.
2. Whether Albert received ineffective assistance of counsel because counsel presented no defense case, did not call Albert to testify, and did not file pretrial constitutional motions.
3. Whether sufficient evidence supported Albert's convictions for storage of salvage.
4. Whether the conditions attached to Albert's suspended sentences rendered the sentences illegal.

HOLDINGS

1. BMCC 27-601(g) was not unconstitutionally vague as applied to Albert because the ordinance, read together with its definitions, gave sufficient notice of the prohibited conduct and supplied adequate enforcement guidelines.
2. Albert was not denied effective assistance of counsel because he failed to establish either deficient performance or a reasonable probability that a different trial strategy would have produced an acquittal.
3. The evidence was sufficient to support both convictions because a rational jury could find that the offending items remained on Albert's property for more than five days.
4. The sentences were legal because the condition requiring Albert to clean up his property to the satisfaction of the City Code Enforcement Division was a reasonable condition of suspended sentences and was sufficiently understood in context.

KEY QUOTATIONS

"The void for vagueness doctrine "requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." (¶ 16)

"The defendant must demonstrate that (1) "counsel's performance was deficient or fell below an objective standard of reasonableness," and (2) "establish prejudice by demonstrating that there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." (¶ 26)

FACTUAL BACKGROUND

Albert owned a residence in Billings, Montana, where code-enforcement officers observed extensive accumulated materials, including bicycle parts, tire rims, junk wood, containers, barrels, cardboard boxes, batteries, ladders, and other items. Officers visited the property repeatedly in response to neighborhood complaints, warned Albert about the condition of the property, explained what needed to be removed, and offered assistance. Photographs and officer testimony showed that the items remained on the property for more than five days, resulting in two convictions for violating BMCC 27-601(g).

PROCEDURAL HISTORY

Billings code-enforcement officers charged Albert with two counts of storage of salvage. After a jury trial in Billings Municipal Court, Albert was convicted and received suspended sentences conditioned on cleaning his property and complying with medical-treatment requirements. The Yellowstone County District Court affirmed, and the Montana Supreme Court affirmed the District Court.

DISPOSITION

affirmed

CASES CITED

- State v. Knudson, 2007 MT 324, ¶¶ 12, 18, 340 Mont. 167, 174 P.3d 469
- State v. Herrman, 2003 MT 149, ¶ 18, 316 Mont. 198, 70 P.3d 738
- State v. Bomar, 2008 MT 91, ¶ 13, 342 Mont. 281, 182 P.3d 47
- State v. Swann, 2007 MT 126, ¶¶ 16-19, 337 Mont. 326, 160 P.3d 511
- State v. Legg, 2004 MT 26, ¶ 24, 319 Mont. 362, 84 P.3d 648
- State v. Mainwaring, 2007 MT 14, ¶ 18, 335 Mont. 322, 151 P.3d 53
- State v. Dixon, 2000 MT 82, ¶ 27, 299 Mont. 165, 998 P.2d 544
- Kolender v. Lawson, 461 U.S. 352, 357-58, 103 S. Ct. 1855 (1983)
- Sellner v. State, 2004 MT 205, 322 Mont. 310, 95 P.3d 708
- State v. Turnsplenty, 2003 MT 159, ¶ 14, 316 Mont. 275, 70 P.3d 1234
- State v. St. John, 2001 MT 1, ¶ 37, 304 Mont. 47, 15 P.3d 970
- State v. Jefferson, 2003 MT 90, ¶ 48, 315 Mont. 146, 69 P.3d 641
- State v. Kougl, 2004 MT 243, ¶ 11, 323 Mont. 6, 97 P.3d 1095
- State v. Hagen, 2002 MT 190, ¶ 23, 311 Mont. 117, 53 P.3d 885
- State v. McWilliams, 2008 MT 59, ¶ 36, 341 Mont. 517, 178 P.3d 121
- State v. Rosling, 2008 MT 62, ¶ 21 n. 2, 342 Mont. 1, 180 P.3d 1102
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)