

SUPREME COURT OF THE STATE OF MONTANA

State v. Dustin Robertson

2015 MT 266 (2015) · No. DA 14-0373 · Decided September 8, 2015

SUMMARY

The Montana Supreme Court affirmed a probation condition prohibiting Dustin Robertson from contacting his two children unless they voluntarily initiated contact through the Department of Corrections. The court held that Robertson had not preserved his constitutional challenges and that plain-error review was unwarranted. Applying deferential review, the court concluded that the condition had a sufficient nexus to the offense and offender and was not an abuse of sentencing discretion.

CASE DETAILS

|                       |                                                                                                                                                                                                                                           |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of Montana                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Chief Justice Mike McGrath; Mike McGrath; Beth Baker; Laurie McKinnon; James Jeremiah Shea; Michael E. Wheat                                                                                                                              |
| JURISDICTION          | Montana                                                                                                                                                                                                                                   |
| DECIDED               | September 8, 2015                                                                                                                                                                                                                         |
| DOCKET                | DA 14-0373                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Direct appeal from a felony criminal-endangerment conviction challenging a probation condition prohibiting contact with the defendant's children unless the children voluntarily initiated contact through the Department of Corrections. |
| STANDARD OF REVIEW    | Sentencing conditions are reviewed under a dual standard: legality is reviewed de novo; if the condition is legal, the court reviews it for abuse of discretion.                                                                          |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                            |
| PARTIES               | Dustin Robertson v. State of Montana                                                                                                                                                                                                      |

TOPICS

- sentencing
- probation
- criminal procedure
- preservation of error
- appellate procedure

## PRACTICE AREAS

criminal law

criminal procedure

sentencing

appellate procedure

constitutional law

## QUESTIONS PRESENTED

1. Whether the sentencing court's probation condition prohibiting Robertson from contacting his children unless they voluntarily initiated contact violated his constitutional parental rights and related statutory rights.
2. Whether Condition 25 was unreasonable or constituted an abuse of discretion because Robertson was not convicted of an offense against his children and the children were not named in the amended information or plea agreement.

## HOLDINGS

1. The court declined to review Robertson's as-applied constitutional challenges because he did not raise constitutional objections in the District Court and the circumstances did not warrant plain-error review.
2. Condition 25 was legally authorized, sufficiently connected to Robertson and his offense, and did not constitute an abuse of the District Court's broad sentencing discretion.

## KEY QUOTATIONS

*“When a defendant challenges a sentencing condition on appeal, we review the condition under a dual standard of review. We review the legality of the condition de novo. If the challenged condition is legal, we then review the condition for abuse of discretion.”* (¶ 7)

*“As a general rule, we will affirm a condition of probation imposed pursuant to . . . statutory authority so long as the restriction or condition has some correlation or connection— i.e., nexus—to the underlying offense or to the offender.”* (¶ 16)

## FACTUAL BACKGROUND

Robertson pleaded guilty to felony criminal endangerment arising from his physical assault of Cady, the mother of his two young children. At sentencing, Cady testified that the children had witnessed Robertson hit, choke, punch, intimidate, and threaten her and had undergone counseling because of the resulting emotional effects. Robertson also admitted grabbing his son while assaulting Cady, and a protective order already restricted his contact with the children.

## PROCEDURAL HISTORY

Robertson originally faced kidnapping, child-endangerment, and partner-or-family-member-assault charges. He pleaded guilty under an amended information to one count of felony criminal endangerment, and the State dismissed the remaining charges. The District Court sentenced him to five years in the custody of the Department of Corrections, with two years suspended, and imposed Condition 25 restricting contact with Cady, their two children, and Cady's mother. Robertson appealed the condition as applied to his children, and the Montana Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- State v. Stiles, 2008 MT 390, ¶ 7, 347 Mont. 95, 197 P.3d 966
- State v. Brotherton, 2008 MT 119, ¶ 10, 342 Mont. 511, 182 P.3d 88
- State v. Ashby, 2008 MT 83, ¶ 9, 342 Mont. 187, 179 P.3d 1164
- State v. LaFreniere, 2008 MT 99, ¶ 11, 342 Mont. 309, 180 P.3d 1161
- State v. Lenihan, 184 Mont. 338, 343, 602 P.2d 997, 1000 (1979)
- State v. Beaudet, 2014 MT 152, ¶ 17, 375 Mont. 295, 326 P.3d 1101
- State v. Essig, 2009 MT 340, ¶ 31, 353 Mont. 99, 218 P.3d 838
- State v. Mackrill, 2008 MT 297, ¶ 48, 345 Mont. 469, 191 P.3d 451
- State v. Bullplume, 2013 MT 169, ¶ 18, 370 Mont. 453, 305 P.3d 753
- State v. Manywhitehorses, 2010 MT 225, ¶ 14, 358 Mont. 46, 243 P.3d 412
- State v. Muhammad, 2002 MT 47, 309 Mont. 1, 43 P.3d 318
- State v. Herd, 2004 MT 85, 320 Mont. 490, 87 P.3d 1017