DA 17-0405

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 137N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MATTHEW DAVID SHERMAN,

Defendant and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DC 13-220
Honorable Jeffrey H. Langton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Matthew David Sherman, Self-Represented, Deer Lodge, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Roy Brown, Assistant Attorney General, Helena, Montana

William Fulbright, Ravalli County Attorney, Thorn Geist, Deputy County Attorney, Hamilton, Montana

Submitted on Briefs: May 22, 2019

Decided: June 11, 2019

Filed:

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Matthew David Sherman (Sherman) appeals from the May 16, 2017 Opinion & Order re: Motion to Withdraw Guilty Plea and Other Motions issued by the Montana Twenty-First Judicial District Court, Ravalli County, denying Sherman's Motion to Withdraw Guilty Plea. We affirm.

¶3 A month before trial, Sherman and the State entered into an open plea agreement. Pursuant to the agreement, the State agreed to file an Amended Information charging Sherman with one count of felony possession of methamphetamine with intent to distribute, one count of felony possession of morphine sulfate, and one count of misdemeanor possession of marijuana. Sherman agreed to be sentenced as a persistent felony offender (PFO). As a PFO, Sherman could be sentenced to a mandatory minimum sentence of 5 years on each felony offense with a maximum of up to 100 years on each felony offense, plus six months in jail on the misdemeanor offense. On December 18, 2014, the State filed the Amended Information. On December 23, 2014, Sherman appeared with counsel for a change of plea hearing. At that time, his counsel provided the court with the executed Guilty Plea and Waiver of Rights form. This document clearly provided on the signature

page, "This is an open plea agreement and Defendant understands he is subject to all statutory minimum and possible maximum sentences for the above-referenced charges." At the hearing Sherman affirmed in open court that: (1) he was aware of the maximum sentence for each charge and the combined maximum sentence he could receive—200 years in prison, plus six months of detention, plus a fine up to $100,500; (2) he understood he was giving up his constitutional rights—to maintain his not guilty plea and go to trial and his right to confront and cross-examine witnesses; (3) he understood the plea agreement, his attorney's advice, and he did not need additional time to consider the plea agreement; (4) he believed his attorney was competent and that he had received competent legal advice; (5) he was not induced by threat or force of pressure to enter into the plea agreement; and (6) he was not under the influence of drugs or alcohol. Sherman thereafter pled guilty to each of the charges in the Amended Information and detailed for the court the factual basis for his guilty pleas.

¶4 Prior to sentencing, Sherman obtained new counsel and then moved to continue sentencing to file a motion to withdraw his guilty pleas. The District Court granted the motion to continue, vacated the sentencing hearing, and gave Sherman 20 days to file the motion to withdraw his guilty pleas. Sherman did not file a motion to withdraw his guilty pleas and instead requested the court reset the sentencing hearing. At sentencing, Sherman was sentenced as a PFO to the Montana State Prison for 100 years with a 25-year parole restriction. Sherman then filed, pro se, a motion to withdraw his guilty pleas, but before the District Court could rule on it, he also filed an appeal which divested the District Court

of jurisdiction. This Court affirmed Sherman's sentence. *State v. Sherman*, 2017 MT 39, 386 Mont. 363, 390 P.3d 158. Upon remittitur, the District Court denied Sherman's motion to withdraw his guilty pleas. Sherman appeals.

¶5 We review a district court's denial of a motion to withdraw a guilty plea to determine whether the district court's underlying findings of fact are clearly erroneous. We then review the ultimate, mixed question of voluntariness de novo, to determine if the district court's interpretation of the law—and application of the law to facts—is correct. *State v. Terronez*, 2017 MT 296, ¶ 18, 389 Mont. 421, 406 P.3d 947 (citing *State v. Warclub*, 2005 MT 149, ¶ 23, 327 Mont. 352, 114 P.3d 254).

¶6 A defendant may withdraw his guilty plea within one year of final judgment for "good cause." Section 46-16-105(2), MCA. "Good cause includes the involuntariness of the plea, but it may include other criteria. A plea must be voluntary because the defendant is waiving his constitutional rights to not incriminate himself and to a trial by jury." *Terronez*, ¶ 27 (citations and internal quotation omitted). This Court has adopted the *Brady* standard to determine if a plea was voluntarily made:

> A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper to the prosecutor's business (e.g. bribes).

Terronez, ¶ 27 (quoting *Warclub*, ¶ 18 (citing *Brady v. U.S.*, 397 U.S. 742, 755, 90 S. Ct. 1463, 1472 (1970))). The burden is on the defendant to show the plea was involuntary. On the basis of the evidence presented, if there is any doubt regarding whether

a guilty plea was voluntarily and intelligently made, the doubt must be resolved in favor of the defendant. *Terronez*, ¶ 27.

¶7 From our review of the record, we conclude the District Court's underlying findings of fact were not clearly erroneous. The District Court carefully considered and thoroughly addressed Sherman's assertions of anxiety and emotional duress, newly discovered evidence, and attorney coercion and appropriately determined Sherman failed to meet his burden to show good cause for withdrawal of his guilty pleas. The record fully supports the District Court's findings that Sherman was competent to enter his guilty pleas; Sherman was aware of the direct consequences of his pleas; Sherman was not induced by threats, misrepresentation, or improper promise; and Sherman expressed satisfaction with counsel. From the District Court's written order, it is clear the court correctly understood the law. The District Court's application of the facts to the law was correct.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶9 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ JIM RICE