

DA 11-0648

IN THE SUPREME COURT OF THE STATE OF MONTANA

2012 MT 126N

MICHAEL R. LUFBOROUGH,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Sixteenth Judicial District,
In and For the County of Custer, Cause No. DC 08-13
Honorable Gary L. Day, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Michael Ray Lufborough, self-represented, Shelby, Montana

For Appellee:

Steve Bullock, Montana Attorney General; C. Mark Fowler, Assistant
Attorney General, Helena, Montana

Wyatt Glade, Custer County Attorney, Miles City, Montana

Submitted on Briefs: May 30, 2012

Decided: June 12, 2012

Filed:

Clerk

Justice Brian Morris delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), 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 Appellant Michael Ray Lufborough (Lufborough) appealed the District Court's order denying his petition to relieve himself of various fines and monetary obligations imposed by the District Court as part of his sentence in a criminal case.

¶3 Lufborough was convicted of two counts of criminal endangerment, both misdemeanors, in Custer County Cause No. DC-08-13. The court required Lufborough to pay a fine of \$500 as well as a surcharge in the amount of \$155. Lufborough later was convicted of criminal endangerment, a felony, in Custer County Cause No. DC-09-16. The District Court's sentence ordered Lufborough to pay a fine of \$500 as well as a surcharge in the amount of \$80. Lufborough did not appeal his conviction or sentence.

¶4 Lufborough later filed a petition in the District Court for "remission" of what he alleged were "costs." Lufborough requested remission of \$650 from Cause No. DC-08-13, and he requested the remission of the entire \$580 in Cause No. DC-09-16. The District Court denied Lufborough's petition. Lufborough timely appeals.

¶5 Lufborough proceeds pro se on appeal. He argues that the District Court failed to consider the manifest hardship on him to pay a fine and surcharge. He cites the fact that he earns a prison wage of sixty-three cents per day and that he must pay for his own personal items at the prison. The State countered that Lufborough knew the consequences of his

guilty plea and the potential sentence associated with it.

¶6 We review a district court's denial of a post-trial motion for an abuse of discretion. *State v. Griffin*, 2007 MT 289, ¶ 10, 339 Mont. 465, 172 P.3d 1223. We review criminal sentences for legality only. *State v. Kotwicki*, 2007 MT 17, ¶ 5, 335 Mont. 344, 151 P.3d 892. It is manifest on the face of the briefs and the record before us the District Court imposed sentences on Lufborough, including fines and surcharges, that fell within the statutory parameters for the offenses of which he was convicted. It is further evident that the District Court did not abuse its discretion in upholding these legal sentences when it denied Lufborough's post-trial motion.

¶7 Affirmed.

/S/ BRIAN MORRIS

We Concur:

/S/ MIKE McGRATH
/S/ JAMES C. NELSON
/S/ MICHAEL E WHEAT
/S/ BETH BAKER