

No. 92-266

IN THE SUPREME COURT OF THE STATE OF MONTANA

1992

STATE OF MONTANA,

Plaintiff and Respondent,

-vs-

SHAWN H. DAVIS,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and for the County of Missoula,
The Honorable John S. Henson, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Shawn H. Davis, Pro Se, Deer Lodge, Montana

For Respondent:

Hon. Marc Racicot, Attorney General
Jennifer Anders, Assistant, Helena, Montana
Robert Deschamps, III, County Attorney
Karen Townsend, Deputy, Missoula, Montana

FILED

NOV -5 1992

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

Submitted on Briefs: October 14, 1992

Decided: November 5, 1992



Clerk

Justice R. C. McDonough delivered the Opinion of the Court.

This is an appeal from an order of the District Court of the Fourth Judicial District, Missoula County, denying appellant's petition for post conviction relief, which requested in effect that petitioner be allowed to withdraw his guilty plea. We affirm.

The appellant originally pled not guilty to felony theft, but later signed a plea agreement changing his plea to guilty. In accordance with the plea agreement he was given a two-year deferred sentence and was ordered to pay restitution, costs and attorney fees. He was also ordered to serve 90 days in the county jail with credit for time served.

A little over eleven months later the county attorney's office petitioned the court to revoke appellant's original deferred sentence for numerous parole violations. After hearing the deferred sentence was revoked or vacated and the appellant was sentenced to ten years in the Montana State Prison with five years suspended.

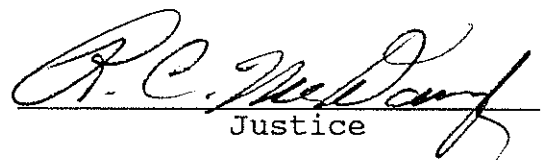
In his petition for post conviction relief appellant contends his counsel was ineffective in failing to investigate the value of the property alleged to have been stolen and in advising him to plead guilty to felony theft because a jury would have convicted him of only a misdemeanor (less than \$300 in value) rather than felony theft (over \$300 in value). The victim reported the following items stolen from his van: an overcoat, fire extinguisher, car stereo, several cassette tapes, and prescription sun glasses. The total value of the stolen items, according to the

victim, was more than \$450. Only the overcoat, worth \$150, the fire extinguisher, worth \$50, and several cassette tapes were found in appellant's car and could be introduced as physical evidence. The appellant's rationale is that the recovered physical evidence had a value of \$200 and therefore a jury could find him guilty of only a misdemeanor.

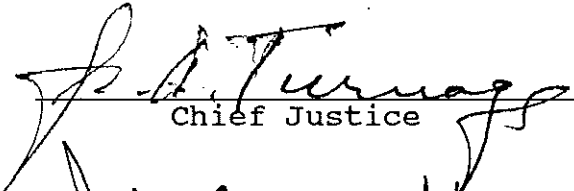
The State, however, had a strong circumstantial case against appellant for the theft of the other items reported stolen, which would place the value of all of the stolen property at over \$300. It was this fact which caused defense counsel to advise the appellant to plead guilty. We conclude there is substantial evidence to support the District Court's findings and conclusions that counsel did not fail to properly investigate the value of the stolen property and evaluate the evidence.

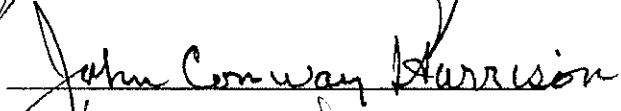
We further find there is substantial evidence in the record to affirm the District Court's findings and conclusions that appellant was fully informed of all of the relative facts and facets of the case by his counsel and that he "intelligently and knowingly," and voluntarily pled guilty and admitted the crime.

Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1988 Internal Operating Rules, this decision shall not be cited as precedent and shall be published by its filing as a public document with the Clerk of this Court and by a report of its result to the West Publishing Company.

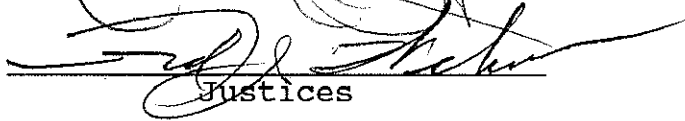

Justice

We Concur:


Chief Justice


Justice


Justice


Justice

November 5, 1992

CERTIFICATE OF SERVICE


I hereby certify that the following order was sent by United States mail, prepaid, to the following named:

Shawn H. Davis
Montana State Prison
700 Conley Lake Rd.
Deer Lodge, MT 59722

HON. MARC RACICOT, Attorney General
Jennifer Anders, Assistant
Justice Bldg.
Helena, MT 59601

Robert Deschamps, III, County Attorney
Karen Townsend, Deputy
200 W. Broadway
Missoula, MT 59802

ED SMITH
CLERK OF THE SUPREME COURT
STATE OF MONTANA

BY:  _____
Deputy