

No. 92-325

IN THE SUPREME COURT OF THE STATE OF MONTANA

1993

STATE OF MONTANA,

Plaintiff and Respondent,

-vs-

DOUGLAS C. MITCHELL,

Defendant and Appellant.

APPEAL FROM: District Court of the Tenth Judicial District,
In and for the County of Fergus,
The Honorable Peter L. Rapkoch, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Bradley B. Parrish, Attorney at Law, Lewistown,
Montana

For Respondent:

Hon. Marc Racicot, Attorney General, John Paulson,
Assistant Attorney General, Helena, Montana
Thomas P. Meissner, Fergus County Attorney,
Lewistown, Montana

Submitted on Briefs: December 22, 1992

Decided: January 12, 1993

FILED
Filed:
JAN 12 1993
Ed. B. Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

Ed. B. Smith
Clerk

Justice Karla M. Gray delivered the Opinion of the Court.

Douglas C. Mitchell appeals from an order of the Tenth Judicial District Court, Fergus County, denying his Motion to Amend Sentence. We affirm on procedural grounds.

Appellant Mitchell presents the issue as whether the District Court erred in ordering the payment of interest as part of restitution.

On February 12, 1991, Mitchell entered a plea of guilty to the offense of felony robbery of the Norwest Bank of Lewistown, Montana. The District Court subsequently held a sentencing hearing and, on May 30, 1991, entered a sentencing order. As part of his sentence, appellant was ordered to pay restitution in the amount taken from the bank, together with interest thereon at the rate of 10% from the date of the robbery. No objection was made to the sentence; no appeal was taken.

On April 8, 1992, some ten months after the original sentencing order, appellant moved the District Court to amend the restitution portion of his sentence. He asserted that neither statute nor case law authorized interest as part of restitution and contended for equitable consideration on the basis of his inability to pay the interest. The District Court determined that it was reasonable to include the interest expense associated with the loss of money in restitution and denied the motion. This appeal followed.

Appellant raises a number of legal arguments in support of his contention that a district court may not include as restitution

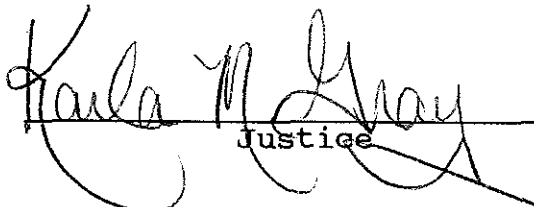
interest on the amount of money stolen. We decline to address this issue on the merits.

Appellant's legal arguments challenging the validity of the inclusion of interest as part of restitution in the original sentence could and should have been raised on appeal from the original sentencing order dated May 30, 1991. No appeal having been taken, we will not consider the arguments here.

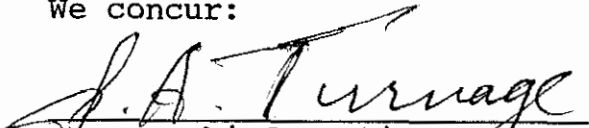
We note that § 46-18-246, MCA (1989), provided Mitchell an alternative avenue for modification of the restitution portion of his sentence. That statute allows an offender to petition the sentencing court at any time "to adjust or otherwise waive payment of any part of any ordered restitution" on essentially equitable grounds. Id. However, Mitchell did not petition the court pursuant to the terms of § 46-18-246, MCA. As a result, it appears that the statute's procedural requirements were not met; furthermore, the court did not act pursuant to the statute in denying Mitchell's motion.

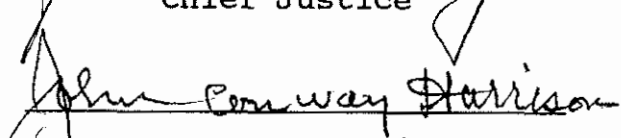
For these procedural reasons, we affirm the District Court's denial of appellant's motion.

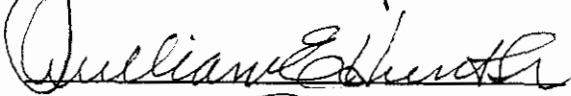
Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1988 Internal Operating Rules, this decision shall not be cited as precedent and shall be published by its filing as a public document with the Clerk of the Supreme Court and by a report of its result to Montana Law Week, State Reporter and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


Justice

We concur:


Chief Justice






Justices

January 12, 1993

CERTIFICATE OF SERVICE

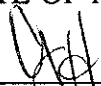
I hereby certify that the following order was sent by United States mail, prepaid, to the following named:

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ED SMITH
CLERK OF THE SUPREME COURT
STATE OF MONTANA

BY:  _____
Deputy