

No. 92-470

IN THE SUPREME COURT OF THE STATE OF MONTANA

1993

STATE OF MONTANA,

Plaintiff and Respondent,

v.

THOMAS E. VAN HAELE,

Defendant and Appellant.

**FILED**

OCT 12 1993

*Ed Smith*  
CLERK OF SUPREME COURT  
STATE OF MONTANA

APPEAL FROM: District Court of the Sixteenth Judicial District,  
In and for the County of Treasure  
The Honorable Kenneth R. Wilson, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Thomas E. Van Haele, Pro Se, Deer Lodge, Montana

For Respondent:

Hon. Joseph P. Mazurek, Attorney General,  
Micheal S. Wellenstein, Asst. Attorney  
General, Helena, Montana; Lee Kerr,  
Treasure County Attorney, Hysham, Montana

Submitted on Briefs: July 29, 1993

Decided: October 12, 1993

Filed:



Clerk

Justice William E. Hunt, Sr., delivered the opinion of the Court.

Appellant Thomas Van Haele appeals from a judgment of the Sixteenth Judicial District Court, Treasure County, based on his pleas of guilty to one count of incest and one count of sexual intercourse without consent. After suspending time on each count upon conditions of probation and parole, the District Court sentenced defendant to a total of 15 years in the Montana State Prison and designated him a dangerous offender.

We affirm.

Appellant asserts various factual defenses and constitutional errors, including cruel and unusual punishment, double jeopardy, due process violations, prosecutorial misconduct, judicial misconduct, ineffective assistance of counsel, and improper bail. Appellant contends that a number of these violations caused him to plead guilty. The State asserts that appellant waived all his factual defenses and constitutional claims by pleading guilty and that his other claims are not supported by the District Court record. We agree.

On appeal, we determine the sole issue to be whether appellant voluntarily and intelligently entered his guilty plea.

In *State v. Hilton* (1979), 183 Mont. 13, 18, 597 P.2d 1171, 1174, we said that "[o]nce a defendant properly pleads guilty he waives all factual defenses as well as constitutional violations which occur prior to the plea." (Citing *State v. Turcotte* (1974), 164 Mont. 426, 428, 524 P.2d 787, 788.) Further, we stated that

"[t]hereafter, '[h]e may only attack the voluntary and intelligent character of his plea . . .'" Hilton, 597 P.2d at 1174 (citations omitted).

The District Court record reveals that appellant appeared before the court with counsel and was not intimidated or coerced into entering pleas of guilty to the two counts. Rather, he entered voluntary and intelligent pleas. According to the record, appellant knowingly waived his rights to a jury trial, to confront and cross-examine witnesses, to have witnesses testify on his behalf, to not be compelled to incriminate himself, and to appeal a jury verdict of guilty. Further, appellant attested that: (1) he understood the plea bargain agreement and was not emotionally or mentally disabled or impaired by drugs, alcohol, or prescription medicine at the time of entering the plea agreement; (2) he was entering into the plea bargain agreement voluntarily and intelligently; and (3) he was competent to enter the pleas.

In sum, the record reflects that appellant's appeal is without merit. On these facts, we hold that appellant voluntarily and intelligently entered pleas of guilty to the counts charged in the amended complaint.

We affirm.

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.

William E. Hendler  
Justice

We concur:

J. A. Tunnage  
Chief Justice

John Conway Harrison

[Signature]

[Signature]  
Justices

October 12, 1993

CERTIFICATE OF SERVICE

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

THOMAS E. VAN HAELE  
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ED SMITH  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

BY: \_\_\_\_\_

Deputy

