

No. 03-252

IN THE SUPREME COURT OF THE STATE OF MONTANA

2003 MT 339N

STATE OF MONTANA,

Plaintiff and Respondent,

v.

ROBERT G. SCHLEINING,
a/k/a GLENNROBERT SCHLEINING,

Defendant and Appellant.

APPEAL FROM: District Court of the Ninth Judicial District,
In and For the County of Toole, Cause No. DC 2000-020,
Honorable Marc G. Buyske, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Robert G. Schleining, Pro Se, Shelby, Montana

For Respondent:

Honorable Mike McGrath, Attorney General; C. Mark Fowler,
Assistant Attorney General, Helena, Montana

Merle Raph, County Attorney, Shelby, Montana

Submitted on Briefs: October 30, 2003

Decided: December 11, 2003

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court.

¶2 Robert G. Schleining (Schleining) appeals from the order entered by the District Court denying his motion for credit toward his sentence for time served prior to his conviction. We affirm.

¶3 While imprisoned at the Crossroads Correctional Center in Shelby, Toole County, Montana, on felony offenses arising out of Yellowstone County, Schleining was charged in Toole County with conspiracy, a felony, in regard to his involvement in a scheme to smuggle drugs into the correctional facility, and an arrest warrant was served upon him on September 1, 2000. Schleining pled guilty and was sentenced on February 8, 2001. Thereafter, he moved the District Court to credit this sentence for the time he had served in prison while awaiting disposition of the Toole County charge. The District Court denied the motion on January 2, 2003, concluding that this Court's decision in *State v. Kime*, 2002 MT 38, 308 Mont. 341, 43 P.3d 290, was controlling and required denial of the motion. Following Schleining's receipt of a copy of the court's order on March 25, 2003, he filed an appeal on April 1, 2003.

¶4 Schleining argues that he is entitled to pre-conviction credit toward his Toole County sentence for the time he served at the Crossroads facility pursuant to § 46-18-403(1), MCA,

which addresses credit for time served prior to conviction. We review a district court's sentence for legality. *State v. Horton*, 2001 MT 100, ¶ 17, 305 Mont. 242, ¶ 17, 25 P.3d 886, ¶ 17. Our standard of review of the legality of a sentence is whether the district court abused its discretion. *Horton*, ¶ 17.

¶5 It is appropriate to decide this case pursuant to our Order of February 11, 2003, amending Section 1.3 of our 1996 Internal Operating Rules and providing for memorandum opinions. It is manifest on the face of the briefs and the record before us that the appeal is without merit because the legal issues are clearly controlled by settled Montana law, namely *State v. Kime*, which addressed proper application of § 46-18-403(1), MCA, and which the District Court correctly interpreted herein. There was clearly no abuse of discretion by the District Court.

¶6 We affirm.

/S/ JIM RICE

We concur:

/S/ KARLA M. GRAY
/S/ JAMES C. NELSON
/S/ JIM REGNIER
/S/ PATRICIA COTTER