

No. 04-766

IN THE SUPREME COURT OF THE STATE OF MONTANA

2005 MT 227N

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STATE OF MONTANA,

Plaintiff and Respondent,

v.

ERIC BOUCHER,

Defendant and Appellant.

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APPEAL FROM: District Court of the Eighth Judicial District,  
In and for the County of Cascade, Cause No. DDC 03-550  
The Honorable Dirk Sandefur, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Matthew McKittrick, Cascade County Public Defender's Office, Great Falls,  
Montana

For Respondent:

Hon. Mike McGrath, Montana Attorney General, C. Mark Fowler, Assistant  
Attorney General, Helena, Montana; Brant S. Light, Cascade County  
Attorney, Joel Thompson, Deputy County Attorney, Great Falls, Montana

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Submitted on Briefs: July 26, 2005

Decided: September 13, 2005

Filed:

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Clerk

Justice James C. Nelson 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 but 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 Eric Boucher appeals the condition of his sentence imposed by the District Court for the Eighth Judicial District, Cascade County, ordering him to contribute a DNA sample following his felony conviction of operating a clandestine laboratory. We affirm.

### **BACKGROUND**

¶3 On July 22, 2004, Boucher pled guilty to Operation of an Unlawful Clandestine Laboratory, a felony, in violation of § 45-9-132, MCA. Boucher appeared for sentencing with his attorney on September 9, 2004. During the sentencing hearing, Boucher's attorney objected to the sentencing requirement that Boucher submit to DNA testing on the grounds that it is an unreasonable search and seizure, that it invades Boucher's privacy, and that it is not reasonably and rationally related to the offense to which Boucher pled guilty.

¶4 The District Court noted counsel's objection for the record and sentenced Boucher to fifteen years at the Montana State Prison to run concurrent to the remaining portion of the sentence Boucher is currently serving in another case. The court's September 14, 2004 Judgment of Conviction and Sentencing Order includes as one of the terms and conditions

of Boucher’s sentence that “[d]efendant will submit to DNA testing.” Boucher appeals this portion of his sentence.

### DISCUSSION

¶5 We review a District Court’s sentence for legality only. *State v. Johnson*, 2005 MT 48, ¶ 5, 326 Mont. 161, ¶ 5, 108 P.3d 485, ¶ 5 (citing *State v. Eaton*, 2004 MT 283, ¶ 11, 323 Mont. 287, ¶ 11, 99 P.3d 661, ¶ 11). In *Johnson*, we noted that a person convicted of a felony shall submit to DNA testing pursuant to § 44-6-103, MCA. As in *Johnson*, Boucher was convicted of a crime which meets the definition of a “felony offense” pursuant to § 44-6-101(7), MCA. We do not reach the constitutional issues purportedly raised by Boucher for the same reason we declined to reach those in *Johnson--i.e.*, the lack of adequate briefing. *Johnson*, ¶ 11.

¶6 Accordingly, we hold that Boucher’s sentence is not illegal and we decline to disturb it.

¶7 Affirmed.

/S/ JAMES C. NELSON

We Concur:

/S/ KARLA M. GRAY

/S/ JOHN WARNER

/S/ BRIAN MORRIS

/S/ PATRICIA O. COTTER