

No. 05-373

IN THE SUPREME COURT OF THE STATE OF MONTANA

2006 MT 28N

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DAVID S. AUDET,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Respondent.

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APPEAL FROM: District Court of the Eighth Judicial District,  
In and For the County of Cascade, Cause No. CDV-04-1004  
Honorable Kenneth R. Neill, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

David S. Audet, *Pro Se*, Shelby, Montana

For Respondent:

Honorable Mike McGrath, Attorney General; Joslyn M. Hunt,  
Assistant Attorney General, Helena, Montana

Brant Light, Cascade County Attorney; Susan Weber, Chief  
Deputy County Attorney, Great Falls, Montana

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Submitted on Briefs: January 10, 2006

Decided: February 7, 2006

Filed:

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Clerk

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

¶1 Pursuant to Section I, Paragraph 3(d)(v), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and its case title, Supreme Court cause number and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports

¶2 David S. Audet appeals from the order of the Eighth Judicial District Court, Cascade County, denying his petition for postconviction relief after a hearing regarding Audet's claim that trial counsel was ineffective for conceding Audet's guilt to a misdemeanor charge at his jury trial. The District Court noted trial counsel's testimony that his reasons for conceding Audet's guilt were to bolster his credibility in denying a separate felony charge and to appeal to the jury to convict him of one offense rather than two. It determined that counsel had advised Audet of the strategy and the tactical decision was within the broad range of reasonable decisions regarding trial tactics. On those grounds, the court concluded Audet failed to establish trial counsel had performed deficiently.

¶3 Audet appeals, asserting his counsel was not present at his arraignment. The record reflects, however, that another lawyer from the Cascade County Public Defender's office was present. Audet also contends the trial court improperly declined to accept his guilty plea to the misdemeanor charge at the arraignment. The record indicates that the District Court refused the plea based on its belief that Audet had not had sufficient time to consult with counsel. Finally, Audet argues that, under these circumstances, counsel's concession of his

guilt on the misdemeanor charge constituted ineffective assistance of counsel.

¶4 We have determined to decide this case pursuant to Section I, Paragraph 3(d)(v), of our 1996 Internal Operating Rules, as amended in 2003, which provides for memorandum opinions. It is manifest on the face of the briefs and the record that Audet's appeal is without merit because the issues are clearly controlled by settled Montana law that the District Court correctly interpreted.

¶5 Affirmed.

/S/ KARLA M. GRAY

We concur:

/S/ W. WILLIAM LEAPHART

/S/ JOHN WARNER

/S/ JIM RICE

/S/ BRIAN MORRIS