

DA 08-0612

IN THE SUPREME COURT OF THE STATE OF MONTANA

2009 MT 289N

---

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RONALD ALAN HUMMEL,

Defendant and Appellant.

---

APPEAL FROM: District Court of the Eighteenth Judicial District,  
In and For the County of Gallatin, Cause No. DC 06-154C  
Honorable John C. Brown, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jim Wheelis, Chief Appellate Defender; Kelli S. Sather, Assistant Appellate  
Defender, Helena, Montana

For Appellee:

Hon. Steve Bullock, Montana Attorney General; Tammy K. Plubell,  
Assistant Attorney General, Helena, Montana

Marty Lambert, Gallatin County Attorney, Bozeman, Montana

---

Submitted on Briefs: July 22, 2009

Decided: August 25, 2009

Filed:

---

Clerk

Justice Brian Morris 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 Ronald Alan Hummel (Hummel) appeals from the District Court's order denying his motion to withdraw his no contest plea. We affirm.

¶3 The State charged Hummel with felony DUI, driving with license suspended or revoked, and obstructing a peace officer. The State also sought for persistent felony offender designation. The charges resulted from a motorcycle crash involving Hummel. Officers found Hummel at the scene and he refused the preliminary breath test. Hummel later requested a blood draw. The blood draw revealed a BAC of 0.125.

¶4 Hummel obtained a psychological evaluation at the request of his appointed counsel. The Office of the State Public Defender paid for the evaluation. Hummel then sought a second more specialized neuropsychological evaluation that he claimed was needed due to his alleged brain injury from a 1978 accident. The Office of the State Public Defender refused to pay for this second evaluation and the State also declined. The court denied Hummel's motion.

¶5 The court granted various requests for extensions of the trial date, most of them put forth by Hummel. Hummel also sought and obtained a change in counsel that caused further

delay. Hummel entered a no contest plea shortly after the court denied his motion for a neuropsychological evaluation. Hummel then sought to withdraw his no contest plea on the grounds that it had not been voluntary. The District Court denied Hummel's motion. Hummel appeals.

¶6 Hummel argues on appeal that he was entitled to a more specialized neuropsychological evaluation. Hummel also contends that his counsel provided ineffective assistance by failing to move to dismiss the charges for lack of a speedy trial. He asks the Court to apply plain error review to the speedy trial issues on appeal.

¶7 The Court reviews de novo a district court's denial of a motion to withdraw a guilty plea. *State v. Swensen*, 2009 MT 42, ¶ 9, 349 Mont. 268, 203 P.3d 786. We review a District Court's underlying factual findings to determine whether the findings are clearly erroneous. *Swensen*, ¶ 9. We review for correctness a district court's conclusions of law as well as the court's application of the law to the facts. *Swensen*, ¶ 9.

¶8 We decline to extend plain error review of Hummel's speedy trial claim. *State v. Lewis*, 2007 MT 16, 335 Mont. 331, 151 P.3d 883. We have determined to decide this case pursuant to Section I, Paragraph 3(d), of our 1996 Internal Operating Rules, as amended in 2003, that provide for memorandum opinions. It is manifest on the face of the briefs and the record before us that substantial evidence supports the District Court's findings of fact and that the District Court's legal conclusions were correct.

¶9 We affirm.

/S/ BRIAN MORRIS

We Concur:

/S/ JAMES C. NELSON

/S/ PATRICIA O. COTTER

/S/ JIM RICE

/S/ JOHN WARNER