

DA 10-0106

IN THE SUPREME COURT OF THE STATE OF MONTANA

2010 MT 199N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

GEORGE NOEL,

Defendant and Appellant.

APPEAL FROM: District Court of the Nineteenth Judicial District,
In and For the County of Lincoln, Cause No. DC 02-25
Honorable Michael C. Prezeau, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Colin M. Stephens, Ben Kolter, Smith & Stephens, P.C.,
Missoula, Montana

For Appellee:

Steve Bullock, Montana Attorney General, Matthew T. Cochenour,
Assistant Attorney General, Helena, Montana

Submitted on Briefs: August 31, 2010

Decided: September 14, 2010

Filed:

Clerk

Justice Jim Rice 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 2006, 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 George Noel appeals from the Modified Judgment and Sentence entered by the Nineteenth Judicial District Court, Lincoln County, for the offense of bail jumping, following a revocation proceeding. Judgment was originally imposed upon Noel's guilty plea in October 2002, along with a judgment imposed upon Noel's *Alford* plea in a companion case charging him with sexual assault. In both judgments, the District Court imposed Condition 21, which required Noel to complete sex offender treatment "while on parole," and Condition 22, which required Noel to "follow all treatment plans recommended by counselors or psychologists." While incarcerated, Noel completed two phases of sex offender treatment.

¶3 Following Noel's release from incarceration to serve the suspended portion of his sentences, the State filed revocation petitions in both cases, alleging that Noel had engaged in inappropriate sexual contact with two developmentally disabled women. The District Court granted Noel's motion to dismiss the petition in the bail jumping matter, and the revocation proceeding continued in the companion sexual assault matter.

Following hearing, the District Court revoked Noel's sexual assault sentence, and that judgment is not challenged on appeal. However, as it did for Noel's sexual assault sentence, the District Court modified Condition 21 in Noel's bail jumping sentence to state that Noel was required to participate in sex offender treatment "while *on probation* or parole." (Emphasis added.) The District Court noted this was the original intent and that the modification would correct a "typographical error."

¶4 Noel challenges this modification on appeal, arguing the District Court was without authority to modify Condition 21 of his bail jumping sentence following the dismissal of the revocation petition in that matter. The State argues that Noel waived the argument by failing to make a specific objection, but, following the imposition of sentence, Noel's counsel stated in open court that "I do object to amending [the bail jumping matter]," and thus preserved the issue. The State further argues that the District Court had statutory authority to modify the bail jumping sentence and, in any event, sex offender treatment could have been required under Condition 22 of Noel's sentence as originally imposed.

¶5 We agree with the State and have determined it is appropriate to decide this case pursuant to Section I, Paragraph 3(d) of our 1996 Internal Operating Rules, as amended in 2006, which provides for memorandum opinions. It is manifest on the face of the briefs and the record before us that the findings of fact are supported by substantial evidence and the legal issues are controlled by settled Montana law which the District

Court correctly interpreted, including statutory authority to modify the sentencing condition.

¶6 Affirmed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH

/S/ PATRICIA COTTER

/S/ MICHAEL E WHEAT

/S/ W. WILLIAM LEAPHART