

DA 14-0720

IN THE SUPREME COURT OF THE STATE OF MONTANA

2016 MT 209N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSEPH EDWARD LAWRENCE,

Defendant and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DC 12-127
Honorable James A. Haynes, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Chief Appellate Defender, Kristen L. Peterson, Assistant
Appellate Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Mark W. Mattioli, Assistant
Attorney General, Agency Legal Services Bureau, Helena, Montana

William Fullbright, Ravalli County Attorney, Hamilton, Montana

Submitted on Briefs: July 27, 2016

Decided: August 23, 2016

Filed:



Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, 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 Joseph Edward Lawrence appeals his convictions of sexual assault and solicitation in the Twenty-First Judicial District Court, Ravalli County. Lawrence contends that his conditional guilty plea, which reserved his right to appeal the District Court's ruling on his motion to sever, is invalid because the District Court did not rule on the motion to sever before accepting the plea. The State concedes Lawrence's argument, and agrees that Lawrence's plea and sentence must be vacated because the plea was invalid. *See State v. Rytky*, 2006 MT 134, ¶¶ 8–10, 332 Mont. 364, 137 P.3d 530 (remanding with instructions to vacate the entry of a defendant's guilty plea and sentence because the defendant reserved for appeal the district court's ruling on a motion that was never issued). We reverse and remand with instructions to the District Court to vacate the entry of Lawrence's guilty plea and sentence.

¶3 Because Lawrence's plea is to be vacated, we do not consider Lawrence's alternative argument to vacate his sentence and remand for sentencing before a different judge.

¶4 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion

of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's interpretation and application of the law were incorrect. We reverse and remand for proceedings consistent with this Opinion.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MICHAEL E WHEAT
/S/ BETH BAKER
/S/ PATRICIA COTTER
/S/ JIM RICE