

DA 15-0729

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 122N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

WILLIS LOUIS THOMASON, JR.,

Defendant and Appellant.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause Nos. DC-13-223(B);
DC-95-045(A); DC-96-204(B); DC-96-286(A); DC-09-089(B)
Honorable Robert B Allison, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Eileen A. Larkin, Assistant Appellate
Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Madison L. Mattioli,
Assistant Attorney General, Helena, Montana

Edward J. Corrigan, Flathead County Attorney, Alison E. Howard, Deputy
County Attorney, Kalispell, Montana

Submitted on Briefs: April 25, 2018

Decided: May 15, 2018

Filed:



Clerk

Justice Ingrid Gustafson 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 Willis Louis Thomason, Jr. (Thomason) appeals from the September 15, 2014 order of the Eleventh Judicial District Court, Flathead County, denying his motion to withdraw guilty plea. We affirm.

¶3 In 2013, the State filed an Information charging Thomason with two felony counts of robbery. Thomason was charged after he came forward and confessed to two unsolved robberies. On February 3, 2014, the morning of trial, Thomason decided to accept a plea deal. Prior to orally pronouncing the plea deal, Thomason expressed he would accept the plea deal but wanted a mental health evaluation. The State stated it would not oppose a mental health evaluation and the District Court agreed that such evaluation may assist the District Court at sentencing. The District Court stated Mr. Bennett, Thomason's counsel, should file a motion to allow the District Court to order a mental health evaluation. However, no such motion was ever made by Mr. Bennett.

¶4 Mr. Bennett proceeded with oral pronouncement of the plea deal. Mr. Bennett stated the agreement would provide: (1) Thomason would plead guilty to both counts of robbery, (2) the State would recommend a fifteen-year sentence on each count to run consecutive with no suspended time, (3) the State would recommend a net sentence of 25

years to run consecutive to the robbery counts for Thomason's four revoked sentences,¹ (4) Thomason would be free to argue a lesser amount of time, (5) the State would dismiss its request for persistent felony offender designation, and (6) the State would not oppose Thomason's request for a mental health evaluation, leaving it up to the District Court to determine whether or not to order a mental health evaluation.

¶5 The District Court then proceeded with the colloquy ensuring Thomason fully understood the plea agreement. Thomason indicated he comprehended the plea agreement, was satisfied with his attorney's services, and that he entered into the agreement freely and voluntarily. Thomason pled guilty to both counts of felony robbery. The District Court set a sentencing hearing for April 24, 2014. Mr. Bennett requested a continuance to complete the pre-sentence investigation report and mental health evaluation. The sentencing hearing was reset for June 19, 2014.

¶6 On June 19, 2014, Mr. Bennett informed the District Court Thomason wanted to withdraw his guilty plea. Specifically, Mr. Bennett stated Thomason was unhappy with Mr. Bennett's handling of the plea agreement and as such Mr. Bennett was uncomfortable with continuing to represent Thomason at sentencing. After this discussion, the District Court proceeded with sentencing. The State recommended a net total of 55 years to Montana State Prison. Before the District Court imposed sentencing, Thomason then requested postponement for a week. Thomason stated he wanted to withdraw his guilty plea because he had discovered evidence proving he was innocent of one of the robberies.

¹ The State agreed to recommend 30 years for the two counts of robbery and 25 years for his revoked sentences. A net total of 55 years to Montana State Prison.

Thomason further stated his ground for withdraw of plea was not Mr. Bennett's performance as an attorney, it was about evidence being presented. Thomason also complained he had not yet received a mental health evaluation. The District Court explained no motion requesting a mental health evaluation had been filed and no mental health evaluation had been ordered. Sentencing proceeded and the District Court ultimately followed the State's recommendation sentencing Thomason to 55 years to the Montana State Prison.

¶7 On August 21, 2014, Thomason, appearing pro se, filed a motion to withdraw his guilty plea. Thomason's motion outlined several pieces of evidence which he asserts show his innocence in one of the robberies. This motion failed to mention the lack of a mental health evaluation. The District Court denied the motion, concluding Thomason failed to establish his guilty plea was involuntary.

¶8 On appeal of the denial of a motion to withdraw guilty plea, this Court reviews findings of underlying fact for clear error and conclusions of law for correctness. *State v. Warclub*, 2005 MT 149, ¶ 24, 327 Mont. 352, 114 P.3d 254. This Court reviews mixed questions of law and fact regarding the voluntariness of a plea de novo. *Warclub*, ¶ 24. This Court reviews ineffective assistance of counsel claims de novo. *Whitlow v. State*, 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861. This Court reviews denials of requests for the appointment of new counsel for abuse of discretion. *State v. Holm*, 2013 MT 58, ¶ 16, 369 Mont. 227, 304 P.3d 365.

¶9 On appeal, Thomason argues his guilty plea was involuntary because he did not receive a mental health evaluation. A guilty plea is valid if made knowingly, voluntarily,

and intelligently. *State v. Keys*, 1999 MT 10, ¶ 12, 293 Mont. 81, 973 P.2d 812. However, a guilty plea may be withdrawn for good cause, including involuntariness. Section 46-16-105(2), MCA; *Warclub*, ¶ 16. In determining the voluntariness of guilty pleas, we apply the United States Supreme Court’s standard from *Brady v. United States*, 397 U.S. 742, 90 S. Ct. 1463 (1970), and we will not overturn a district court’s denial of a motion to withdraw a guilty plea “if the defendant was aware of the direct consequences of such a plea, and if his plea was not induced by threats, misrepresentation, or an improper promise such as a bribe.” *Warclub*, ¶ 32 (citing *Brady*, 397 U.S. at 755, 90 S. Ct. at 1472).

¶10 Here, Thomason asserts his guilty plea was involuntary because it was induced by the State’s promise he would receive a mental health evaluation. It is undisputed Thomason did not receive a mental health evaluation prior to sentencing. Based on the record, however, the State did not promise Thomason a mental health evaluation. During Mr. Bennett’s oral pronouncement of the plea agreement, the State stated it would not object to a motion should one be made by Mr. Bennett for a mental health evaluation. However, Mr. Bennett never brought forth a motion for a mental health evaluation for Thomason. The State did not break its promise because defense counsel never filed a motion to obtain a mental health evaluation for Thomason. The State did all it was obligated to do under the plea agreement. Therefore, we conclude Thomason’s guilty plea was not involuntary due to misrepresentations made by the State.

¶11 Thomason argues Mr. Bennett provided ineffective assistance of counsel by failing to obtain a mental health evaluation prior to sentencing. The Sixth and Fourteenth Amendments to the United States Constitution, and Montana Constitution Article II,

Section 24, guarantee criminal defendants the right to effective assistance of counsel. The performance of counsel is constitutionally ineffective only if (1) the performance was deficient and (2) the deficient performance resulted in actual prejudice to the defendant's right to a fair trial. *Ariegwe v. State*, 2012 MT 166, ¶ 15, 365 Mont. 505, 285 P.3d 424; *Heath v. State*, 2009 MT 7, ¶ 17, 348 Mont. 361, 202 P.3d 118; *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). A defendant must establish both prongs of *Strickland*. *Rose v. State*, 2013 MT 161, ¶ 22, 370 Mont. 398, 304 P.3d 387.

¶12 Even if Mr. Bennett's performance was deficient by failing to motion for a mental health evaluation, we conclude Thomason was not prejudiced by the failure to obtain an evaluation. While the State conceded a mental health evaluation may be helpful in assisting the District Court in determining sentencing, Thomason was not required to obtain an evaluation. The record clearly shows the District Court considered the following facts during sentencing: Thomason coming forward on his own volition to admit the crimes, Thomason's previous diagnosis of mental health issues, and the need for finality in all of Thomason's cases. The District Court specifically considered Thomason's mental health during sentencing. Thomason has failed to prove that failure to obtain a more current mental health evaluation prejudiced him.

¶13 Thomason also argued the District Court erred by failing to conduct an adequate inquiry into Thomason's complaints about counsel. In determining if the defendant presented a seemingly substantial complaint about counsel, the district court must make an adequate inquiry into the defendant's complaints. *State v. Weaver*, 276 Mont. 505, 511, 917 P.2d 437, 441 (1996). The inquiry by the district court is sufficient if the district court

considers the defendant's factual complaints together with counsel's specific explanations addressing the complaints. *City of Billings v. Smith*, 281 Mont. 133, 136-37, 932 P.2d 1058, 1060 (1997).

¶14 Here, Mr. Bennett asserted Thomason wanted to withdraw his guilty plea based on him being unhappy with Mr. Bennett's handling of the plea agreement. However, Thomason's own statements at the sentencing hearing rebutted this assertion. Thomason stated his desire to withdraw his guilty plea was based on the discovery of evidence which Thomason thought would be a basis for a not guilty plea, not based on Mr. Bennett's performance as an attorney. Based on the record, the District Court adequately inquired about Thomason's complaints regarding his counsel.

¶15 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.

¶16 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ DIRK M. SANDEFUR
/S/ JAMES JEREMIAH SHEA
/S/ JIM RICE