DA 16-0481

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 223N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DAVID STERLING WINDSOR,

Defendant and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DC 15-95
Honorable Jeffrey H. Langton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Haley Connell Jackson, Assistant Appellate Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Mardell Ployhar, Assistant Attorney General, Helena, Montana

William E. Fulbright, Ravalli County Attorney, Angela Wetzsteon, Deputy County Attorney, Hamilton, Montana

Submitted on Briefs: May 9, 2018

Decided: September 11, 2018

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, 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 David Sterling Windsor appeals the Order of the Twenty-First Judicial District Court, Ravalli County, denying his Motion to Dismiss. We address whether the District Court erred by denying Windsor's Motion to Dismiss his felony driving under the influence of alcohol ("DUI") charge which was premised, in part, on an earlier DUI that was purportedly dismissed. We affirm.

¶3 On April 24, 2015, a retired Montana Highway Patrol Trooper observed a vehicle ahead of him swerving and crossing into the oncoming lane of traffic. The vehicle nearly crashed into a logging truck before the driver pulled into a log yard. The retired Trooper approached the vehicle and discovered it was driven by Windsor, who was already passed out at the steering wheel. A Ravalli County Sheriff's Deputy arrived, attempted to wake Windsor by knocking on the driver's seat window, and ultimately opened the vehicle door to make contact. The Deputy smelled alcohol and observed a large bottle of whiskey sticking out of a backpack on the passenger-side floorboard. The Deputy arrested Windsor and took him to a hospital, where a blood draw showed Windsor had a .293 blood alcohol concentration. On May 12, 2015, the State filed an Information charging Windsor with (1) felony DUI, fourth or subsequent offense, in violation of § 61-8-401, MCA; (2) misdemeanor driving while license suspended or revoked, in violation of

§ 61-5-212, MCA; and (3) careless driving, a misdemeanor, in violation of § 61-8-302, MCA. The State later amended the Information to add a charge of criminal endangerment, a felony, in violation of § 45-5-207, MCA.

¶4 On October 27, 2015, Windsor filed a Motion to Dismiss the charge of felony DUI, fourth or subsequent offense. Windsor's prior DUI convictions included a 1984 offense in Vermont, a 1986 offense in Idaho, a 1994 offense in Idaho, a 2001 offense in Montana, and a January 2015 offense in Montana. Windsor argued the 1984 offense, the 1986 offense, and the 2001 offense did not qualify for purposes of enhancing his current DUI charge from a misdemeanor to a felony. The State conceded Windsor's 1984 and 1986 DUI convictions were not qualifying offenses but maintained the 2001 offense should be considered as a prior conviction for purposes of the felony DUI statute. The only offense at issue in this appeal, therefore, is the 2001 DUI offense.

¶5 The facts of Windsor's 2001 DUI are as follows: On December 6, 2000, Windsor pled guilty in Cause No. DC 00-116 to (1) misdemeanor DUI;[1] (2) driving while license suspended or revoked; (3) driving without liability insurance in effect; and (4) criminal endangerment. On February 27, 2001, the District Court entered an amended judgment. The District Court sentenced Windsor to forty-five days for each of the first three charges, to run concurrently, and imposed a six-year deferred sentence for the fourth charge, criminal endangerment. On January 29, 2007, Windsor petitioned the District Court to "withdraw the plea of guilty . . . [because Windsor] has fully complied with all rules, terms

[1] The State initially charged Windsor with felony DUI; however, as part of the plea agreement, the State amended the charge.

and conditions as set forth in the Order of Deferral, dated February 27, 2001 . . . ." Windsor's probation and parole officer signed a statement verifying that Windsor had "complied with all rules of probation and [the February 27, 2001] Order of Deferral." On February 6, 2007, the District Court signed a form order ("2007 Order") that stated, the 2001 "Information is dismissed," but did not list any specific offenses.

¶6 The District Court denied Windsor's Motion to Dismiss. The District Court concluded that the 2007 Order was factually erroneous and should be corrected pursuant to § 46-18-116(3), MCA. The District Court entered an amended order to correct the 2007 Order purportedly dismissing Windsor's 2001 DUI conviction, concluding the dismissal applied only to the deferred sentence Windsor received on his felony criminal endangerment conviction and not to the three misdemeanor charges, including the 2001 DUI conviction. The District Court thus determined that Windsor's 1994 Idaho conviction, his 2001 Montana conviction, and his January 2015 Montana conviction subject him to felony DUI in this case.

¶7 On January 27, 2016, Windsor pled guilty to the felony DUI charge, reserving his right to appeal the District Court's denial of his Motion to Dismiss and the District Court's amendment of the 2007 Order in DC 00-116. On March 30, 2016, the District Court held a sentencing hearing and sentenced Windsor to thirteen months in the Department of Corrections' ("DOC") custody, with a requirement that he complete the residential alcohol treatment program, and to five-years suspended commitment to DOC, to run consecutive to the thirteen-month sentence. On June 21, 2016, the District Court entered its written judgment. Windsor appeals.

¶8 We review a district court's conclusions of law and its interpretation of statutes de novo for correctness. *State v. Petersen*, 2011 MT 22, ¶ 8, 359 Mont. 200, 247 P.3d 731; *State v. Plouffe*, 2014 MT 183, ¶ 18, 375 Mont. 429, 329 P.3d 1255. We will affirm the district court when it reaches the right result, even if it reaches the right result for the wrong reason. *State v. Ellison*, 2012 MT 50, ¶ 8, 364 Mont. 276, 272 P.3d 646.

¶9 "Once a valid sentence is imposed, a [district] court lacks jurisdiction to modify that sentence absent specific statutory authority." *Gilbert v. State*, 2002 MT 258, ¶ 17, 312 Mont. 189, 59 P.3d 24; *State v. Megard*, 2006 MT 84, ¶ 17, 332 Mont. 27, 134 P.3d 90. Conversely, a district court "may correct a factually erroneous sentence or judgment at any time." Section 46-18-116(3), MCA.

¶10 Windsor argues the 2001 DUI offense in DC 00-116 did not qualify as a prior DUI offense for felony enhancement purposes because it was dismissed by the 2007 Order. Windsor contends that without the 2001 offense, he has only two prior DUI convictions, and his current DUI does not qualify as a felony under the statute. Windsor further argues that the District Court lacked jurisdiction to modify and reverse the 2007 Order in 2015, nearly nine years after the Order was entered. We disagree.

¶11 Montana law regarding dismissal after imposition of a deferred sentence provides in pertinent part:

> Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred . . . upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw a plea of guilty or nolo contendere or may strike the verdict of guilty from the record and order that the charge . . . against the defendant be dismissed.

Section 46-18-204(1), MCA. Windsor did not receive a deferred sentence for his 2001 DUI. The only charge for which the sentence was deferred was the offense of criminal endangerment. Thus, the District Court's 2007 Order could not have dismissed Windsor's 2001 DUI because there was no statutory authority for dismissal of the DUI. *See Gilbert*, ¶ 17. Further, despite the lack of specificity in the 2007 Order as to which offenses were being dismissed, when read as a whole, the 2007 Order evinces the District Court's intent to dismiss *only* Windsor's criminal endangerment charge, for which he had completed the deferred sentence. *See* § 46-18-204(1), MCA. The 2007 Order was not intended to dismiss the other three convictions, for which Windsor received and completed forty-five-day concurrent sentences. Whether or not the District Court lacked the authority to amend the 2007 Order in 2015, as Windsor contends, is irrelevant since the 2007 Order never dismissed Windsor's 2001 DUI in the first place.

¶12 Because Windsor's 2001 DUI offense was never dismissed, the District Court properly considered it for enhancement purposes. The District Court did not err by denying Windsor's Motion to Dismiss his felony DUI charge that was premised, in part, on the 2001 offense. *See Ellison*, ¶ 8.

¶13 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. We affirm.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ JIM RICE
/S/ DIRK M. SANDEFUR
/S/ BETH BAKER
/S/ LAURIE McKINNON