

DA 17-0185

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 99N

---

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RANDY BRYANT WICK,

Defendant and Appellant.

---

APPEAL FROM: District Court of the Fourth Judicial District,  
In and For the County of Missoula, Cause No. DC-15-64  
Honorable Leslie Halligan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Randy Bryant Wick, self-represented, Billings, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, C. Mark Fowler, Assistant  
Attorney General, Helena, Montana

Kirsten H. Pabst, Missoula County Attorney, Jennifer S. Clark, Deputy  
County Attorney, Missoula, Montana

---

Submitted on Briefs: March 28, 2018

Decided: April 24, 2018

Filed:



---

Clerk

Justice Laurie McKinnon 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 This is an appeal of a denied motion to withdraw a guilty plea filed by Appellant Randy Bryant Wick (Wick) in the Fourth Judicial District Court, Missoula County. We affirm.

¶3 On January 24, 2015, Wick was involved in an altercation outside the Oxford Saloon in Missoula. Wick physically confronted a man whom he accused of failing to return forty dollars Wick gave the man to purchase marijuana. A friend of the man intervened to defend him and Wick brandished a knife, threatening both men. When a Missoula police officer arrived at the scene, Wick put away his knife and began to walk away. The officer ordered him to stop and Wick refused, which prompted the officer to tase Wick twice before Wick could be handcuffed.

¶4 Wick was subsequently charged with one count of assault with a weapon, in violation of § 45-5-213, MCA. Public Defender Ted Fellman (Fellman) was appointed counsel and Wick entered a plea of not guilty. Following plea negotiations with the State, Fellman advised Wick of an offer from the State, but explained "I still needed to get [the] surveillance video referenced in the discovery and review it to confirm that it shows what the police reports indicated." Wick nonetheless indicated that he wanted to change his plea

to guilty. Wick filed a waiver of rights, a plea agreement, and entered a plea of guilty to assault with a weapon. On May 27, 2015, Wick appeared with counsel for sentencing; however, the sentencing was continued because Wick indicated he was considering withdrawing his plea. Pending the continued sentencing, Fellman obtained the surveillance video of the altercation and watched the video with Wick. Wick advised Fellman that he would consider his options and call him. On June 4, 2015, Wick notified Fellman he wished to proceed with the plea agreement. On June 10, 2015, the District Court sentenced Wick to three years to the Department of Corrections with all time suspended.

¶5 On June 16, 2016, Wick wrote a letter to the District Court requesting he be allowed to withdraw his plea. Wick claimed, among other issues, that the surveillance video was new evidence. Following briefing and consideration of the record, the District Court considered the merits of Wick's request and determined that his plea was voluntary, denying Wick's request to withdraw his guilty plea.

¶6 While difficult to discern, we find the substance of Wick's asserted error to be that he was denied the effective assistance of counsel, and therefore his guilty plea was not knowingly and voluntarily entered because he had not reviewed the surveillance video prior to changing his plea. The record, however, demonstrates there was a thorough discussion of the rights Wick was waiving when he entered his guilty plea and that he was satisfied with Fellman's services. The record demonstrates Wick was not under the influence of any drugs or alcohol. Further, Wick entered a written acknowledgement and waiver of his rights. The District Court determined no promises, threats, or inducements had been made to induce Wick to change his plea to guilty and that his plea was voluntarily

entered. Significantly, Wick persisted in his desire to plead guilty although knowing about the surveillance video and not having the opportunity to review it. Further, once Wick reviewed the video with his attorney he reaffirmed at the continued sentencing that he wanted to plead guilty.

¶7 Based on this record, we conclude, as the District Court did, that Wick’s guilty plea was knowingly and voluntarily entered. Wick has not shown that he was prejudiced in any way by Fellman’s advice. Indeed, Wick persisted in his guilty plea after Fellman advised he had not had the opportunity to review the surveillance video. This Court “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.” *State v. Warclub*, 2005 MT 149, ¶ 32, 327 Mont. 352, 114 P.3d 254. The District Court’s findings of fact are not clearly erroneous and its application of the law to facts was correct.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶9 The District Court’s denial of Wick’s motion to withdraw his guilty plea is affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ DIRK M. SANDEFUR

/S/ INGRID GUSTAFSON

/S/ JIM RICE