

DA 17-0732

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 13N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ROBERT ALTON GOTSCHALL,

Defendant and Appellant.

APPEAL FROM: District Court of the Sixteenth Judicial District,
In and For the County of Custer, Cause No. DC 2017-20
Honorable Michael B. Hayworth, 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, Roy Brown, Assistant
Attorney General, Helena, Montana

Wyatt A. Glade, Custer County Attorney, Miles City, Montana

Submitted on Briefs: November 13, 2019

Decided: January 21, 2020

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 Robert Alton Gotschall (Gotschall) appeals from the October 20, 2017 Sentencing Order of the Montana Sixteenth Judicial District Court, Custer County, which determined Gotschall's binding plea agreement was silent as to any parole restriction such that the court had the authority to impose a parole restriction without affording Gotschall opportunity to withdraw his guilty plea. We reverse and remand.

¶3 On March 31, 2017, the State charged Gotschall with felony incest for having sexual intercourse with his adult daughter. Gotschall and the State entered into a binding plea agreement pursuant to § 46-12-211(1)(b), MCA—generally referred to as a (1)(b) agreement. The written plea asserted it encompassed all the promises and agreements made between the parties and provided for the State to recommend a 25-year sentence to MSP with no time suspended. Pursuant to the agreement, Gotschall could argue for any sentence he desired. The written plea agreement did not specify whether the court could impose a parole restriction. The parties agreed that pursuant to § 46-12-211(4), MCA, if the court rejected the agreement it must inform Gotschall of such and afford him the opportunity to withdraw his plea. At the change of plea hearing, the District Court informed Gotschall of his right to withdraw his guilty plea in the event the court did not

follow the plea agreement and imposed a harsher sentence than that recommended by the State. Gotschall then entered his guilty plea, the court accepted it, and then ordered a psychosexual evaluation and presentence investigative report be prepared.

¶4 At sentencing, the psychosexual evaluator, Michael Sullivan, recommended Gotschall be designated as a Level III sexual offender and be ineligible for parole at MSP until completion of Phases I and II of sexual offender treatment. The State notified the court that such a restriction would violate the plea agreement and trigger Gotschall's right to withdraw his guilty plea:

[PROSECUTOR]: Mr. Sullivan mentioned in his testimony to the Court and in his evaluation that he would recommend that Mr. Gotschall complete Phases I and II sex offender treatment before being parole eligible. I'm not going to quote him exactly, but that's what I understood from his recommendation to the Court.

I spoke briefly with [defense counsel] before about this, and I believe that the way that this plea agreement is structured, if the Court were to order that specific language it would trigger Mr. Gotschall's right to withdraw his guilty plea.

¶5 Later in the sentencing hearing, the prosecutor again indicated the State's agreement to no parole restriction—"It's up to [Gotschall] whether he makes parole, assuming the Court sentences as I have recommended. That's an incentive for him to complete the treatment as required by statute."

¶6 The court sentenced Gotschall to MSP for 25 years with no time suspended and restricted parole eligibility for the entire 25 years without affording Gotschall the opportunity to withdraw his guilty plea. Despite the parties' representations at sentencing that the plea agreement included a no parole restriction, the court noted that because the

written document was silent regarding a parole restriction it was within the court's authority to impose a parole restriction. Gotschall immediately objected to imposition of the restriction. The court noted the objection but did not alter the parole restriction or permit Gotschall to withdraw his guilty plea. Gotschall appeals.

¶7 A plea agreement is essentially a contract and is subject to contract law standards. *State v. McDowell*, 2011 MT 75, ¶ 14, 360 Mont. 83, 253 P.3d 812. The court also reviews a district court's interpretation of a contract for correctness. *State v. Lewis*, 2012 MT 157, ¶ 13, 365 Mont. 431, 282 P.3d 679.

¶8 Gotschall asserts that despite the written agreement not containing a specific no parole restriction, such was part of the agreement, the parties explicitly told the court that they agreed this promise was part of the plea agreement, and the district court erred when it rejected the parties' (1)(b) plea agreement without giving Gotschall the opportunity to withdraw his guilty plea. The State, rather disingenuously, asserts the parties did not come to an agreement there would be no parole restriction and nowhere in the agreement did the parties express their intent that a parole restriction not be imposed.

¶9 The issue before this Court is whether the State promised Gotschall as part of his plea agreement the district court could not impose a parole restriction without affording Gotschall the opportunity to withdraw his guilty plea.

¶10 Even if a promise is not included in the written plea agreement, if the parties inform the court there is more to the agreement than what is in writing, the court must accept the additional terms as part of the agreement. *See Lewis*, ¶¶ 17-19. From our review of the record, it is clear the parties' plea agreement included a no parole restriction provision and

such was inadvertently omitted from the written plea agreement. Nonetheless, this provision is enforceable, and the court erred in not affording Gotschall the opportunity to withdraw his guilty plea. As such, it is appropriate to reverse and remand this matter to the District Court to vacate its Sentencing Order, permit Gotschall the opportunity to withdraw his guilty plea, and proceed to trial if necessary.

¶11 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.

¶12 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ JIM RICE

/S/ BETH BAKER

/S/ DIRK M. SANDEFUR