

DA 11-0633

IN THE SUPREME COURT OF THE STATE OF MONTANA

2012 MT 104N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

WAYNE A. HUSSAR II,

Defendant and Appellant.

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APPEAL FROM: District Court of the First Judicial District,  
In and For the County of Lewis and Clark, Cause No. CDC 2008-461  
Honorable Kathy Seeley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Wayne A. Hussar, II (self-represented), Shelby, Montana

For Appellee:

Steve Bullock, Montana Attorney General; Mark W. Mattioli, Assistant  
Attorney General, Helena, Montana

Leo Gallagher, Lewis and Clark County Attorney, Helena, Montana

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Submitted on Briefs: April 4, 2012

Decided: May 8, 2012

Filed:

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Clerk

Justice Brian Morris delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), 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 Appellant Wayne A. Hussar, II (Hussar) appeals from an order of the First Judicial District Court, Lewis and Clark County, denying his motion to withdraw his guilty plea. We affirm.

¶3 The State of Montana (State) charged Hussar with felony criminal endangerment and misdemeanor partner family member assault in December 2008. The charges arose from an alleged physical altercation with Hussar's 19-year-old son during which Hussar allegedly discharged a high powered rifle in the direction of his son. Hussar admitted to having "popped a round" about one foot from the victim's foot. The victim was treated for minor injuries as a result of debris deflected by the force of the bullet. Hussar also fired the rifle in the direction of two occupied residences. Hussar entered a plea of guilty to criminal endangerment. The District Court imposed a two year deferred imposition of sentence in January 2009.

¶4 The State filed a petition to revoke Hussar's deferred imposition of sentence in August 2009 based upon allegations of numerous violations of the conditions of the court's deferred sentence, including consumption of alcohol and marijuana. The State filed a supplemental petition to revoke in October 2009 in which it alleged possession of a firearm

and continued consumption of alcohol. Hussar denied some allegations and admitted several others, including consuming alcohol and using marijuana while on supervision. The revocation court committed Hussar to the Department of Corrections (DOC) for a period of three years in December 2009.

¶5 Hussar eventually filed a motion to withdraw his guilty plea in April 2011. Hussar claimed that he had not known that the rifle was loaded. He further alleged that the rifle had discharged as he laid it against the hand rail. The District Court ordered a response to Hussar's motion from the State. The State argued that Hussar voluntarily had entered a guilty plea and had represented to the District Court that he was satisfied with the services of his counsel. The plea agreement included Hussar's handwritten statement that he had fired the shot as a warning during an argument with his son. The District Court denied Hussar's motion. Hussar appeals.

¶6 We review de novo a defendant's motion to withdraw a guilty plea to determine whether the guilty plea had been voluntary. *State v. Usrey*, 2009 MT 227, ¶ 12, 351 Mont. 341, 212 P.3d 279. We review findings of fact to determine whether they are clearly erroneous and we review for correctness conclusions of law. *State v. Warclub*, 2005 MT 149, ¶ 24, 327 Mont. 352, 114 P.3d 254.

¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our 1996 Internal Operating Rules, as amended in 2006, that provide for memorandum opinions. It is manifest on the face of the briefs and the record before us that substantial evidence supports the District Court's findings and that the District Court correctly applied the law.

¶8 Affirmed.

/S/ BRIAN MORRIS

We Concur:

/S/ MIKE McGRATH  
/S/ MICHAEL E WHEAT  
/S/ BETH BAKER  
/S/ JAMES C. NELSON