

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT  
YELLOWSTONE COUNTY

STATE OF MONTANA, )  
 )  
 Plaintiff,) )  
 )  
 vs. ) No. DC 07-541, DC 08-101,  
 ) & DC 08-114  
 )  
 RUSSELL HICKSON, )  
 )  
 Defendant.) )  
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TRANSCRIPT OF PROCEEDINGS

Courtroom - Dept. No. 3  
Yellowstone County Courthouse  
Billings, Montana  
November 3, 2008 - 1:30 p.m.

HON. SUSAN P. WATTERS, PRESIDING JUDGE  
Sentencing hearing

COUNSEL APPEARING

For Plaintiff: YELLOWSTONE COUNTY ATTORNEY'S OFFICE  
Mr. Rodney E. Souza  
P.O. Box 35025  
Billings, Montana 59107-5025

For Defendant: MS. LISA H. BAZANT  
Attorney at Law  
2717 Miles Avenue  
Billings, Montana 59102

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1 PROCEEDINGS

2 THE COURT: Court is in session. You may be  
3 seated.

4 Court calls DC 07-541, State of Montana  
5 versus Russell Hickson. Okay. Now, as I understand it, the  
6 posture of this case was that Mr. Hickson wanted to withdraw  
7 his previously entered pleas of guilty and was not satisfied  
8 with his previous counsel, that's why Ms. Bazant is here on  
9 behalf of Mr. Hickson, and, for the record, Rod Souza is  
10 here on behalf of the State. And I understand now,  
11 Ms. Bazant, that after conferring with your client, you and  
12 the State have come into kind of a global resolution of the  
13 three pending cases, the other two are DC 08-101 and  
14 DC 08-114; is that correct?

15 MS. BAZANT: That is correct, Your Honor.

16 THE COURT: And in fact you filed now a new  
17 Acknowledgment of Waiver of Rights and Plea Agreement and  
18 Modification of Sentence in DC 07-541, correct?

19 MS. BAZANT: Yes, Your Honor.

20 THE COURT: Okay. So, Mr. Hickson, I'm going  
21 to ask you then how you plead to the charge of forgery  
22 common scheme, felony, alleged to have occurred in  
23 Yellowstone County, Montana, on or about August 15th, 2006,  
24 through September 15th, 2006?

25 MS. BAZANT: Your Honor, we never did move to

1 withdraw the guilty plea.

2 THE COURT: I know. I'm just going to ask --

3 MS. BAZANT: You just want to make sure --

4 THE COURT: -- just going to go through this  
5 with you, okay?

6 MR. HICKSON: Guilty.

7 THE COURT: Do you plead guilty, Mr. Hickson?

8 MR. HICKSON: Yes, Your Honor.

9 THE COURT: You have to speak up so he can hear  
10 you for the record.

11 MR. HICKSON: Guilty.

12 THE COURT: Okay. And by pleading guilty here  
13 today, are you telling me that the notification that you  
14 gave to the Court that you wanted to withdraw your  
15 previously entered plea of guilty, you do not wish to do  
16 that anymore, to withdraw a plea of guilty, you want to  
17 enter and remain with a plea of guilty?

18 MR. HICKSON: (No oral response.)

19 THE COURT: I'm asking you, Mr. Hickson, do you  
20 want to plead guilty?

21 MR. HICKSON: Yes.

22 THE COURT: Okay. Because you remember there  
23 was a discussion about you wanting to withdraw your plea of  
24 guilty, you remember that?

25 MR. HICKSON: No.

1 THE COURT: You don't remember that?

2 MR. HICKSON: (Shakes head.)

3 THE COURT: Okay. I thought when you had  
4 previous counsel, you wanted him fired and you wanted to  
5 withdraw your guilty plea.

6 MR. HICKSON: No. I just wanted to get rid of  
7 him.

8 THE COURT: Okay. So I've been provided with  
9 an Acknowledgment of Waiver of Rights and Plea Agreement and  
10 Modification of Sentence, did you sign that document?

11 MR. HICKSON: Yes.

12 THE COURT: And did you have an opportunity to  
13 go through that document with Ms. Bazant?

14 MR. HICKSON: Yes.

15 THE COURT: What is your understanding of the  
16 maximum possible penalty for a conviction for forgery common  
17 scheme, felony?

18 MR. HICKSON: 20 years and a \$50,000 fine.

19 THE COURT: And you understand that you don't  
20 have to plead guilty, that you could take the matter to  
21 trial if you wished?

22 MR. HICKSON: Yes.

23 THE COURT: Do you understand that by pleading  
24 guilty, you waive your right to trial?

25 MR. HICKSON: Yes.

1                   THE COURT: Do you understand that by waiving  
2 your right to trial, you waive any opportunity for  
3 Ms. Bazant to argue to the Court or to the jury that the  
4 charge should, instead of a felony, be a misdemeanor forgery  
5 charge?

6                   MR. HICKSON: Yes.

7                   THE COURT: Do you understand that by pleading  
8 guilty and waiving your right to trial, you waive those  
9 rights set forth in paragraphs 2 and 3 of this  
10 Acknowledgment of Waiver of Rights form?

11                  MR. HICKSON: Yes.

12                  THE COURT: By the way, this form with your  
13 signature was on the 27th of October, 2008, correct?

14                  MR. HICKSON: Yes.

15                  THE COURT: Okay. Now, there has been  
16 negotiated a 1(b) plea agreement wherein in exchange for  
17 your plea of guilty in this matter, both parties will  
18 recommend to the Court that you should be sentenced to  
19 Montana State Prison for a period of 10 years, and the State  
20 also agrees to dismiss the persistent felony offender  
21 designation and will move to dismiss all charges in  
22 DC 08-101 and DC 08-114. Is that your understanding of the  
23 plea agreement?

24                  MR. HICKSON: Yes.

25                  THE COURT: And do you understand that there is

1 a restitution issue, meaning you will be required to pay  
2 some restitution in this matter also?

3 MR. HICKSON: Yes.

4 THE COURT: Now, do you understand that if I  
5 were to decide that this was not an appropriate disposition,  
6 that you would be allowed to withdraw your plea of guilty?

7 MR. HICKSON: Yes.

8 THE COURT: Are you suffering any mental or  
9 emotional disability that would prevent you from  
10 understanding what you're doing today?

11 MR. HICKSON: No.

12 THE COURT: Are you under the influence of  
13 drugs, alcohol or prescription medication today?

14 MR. HICKSON: No.

15 THE COURT: So you fully understand what you're  
16 doing here today, Mr. Hickson?

17 MR. HICKSON: Yes.

18 THE COURT: So I need you to tell me what it is  
19 that you did that makes you plead guilty to the forgery  
20 common scheme charge?

21 MS. BAZANT: Your Honor, may I assist?

22 THE COURT: You may.

23 MS. BAZANT: Mr. Hickson, on or about  
24 August 15th, 2006, through September 15th, 2006, did you  
25 have in your possession two checks from Help For Homeless

1 Pets?

2 MR. HICKSON: Yes.

3 MS. BAZANT: And did you make out two checks to  
4 yourself without authority?

5 MR. HICKSON: No. I endorsed the back of two  
6 checks.

7 MS. BAZANT: Without authority from Homeless  
8 Pets?

9 MR. HICKSON: Yes.

10 MS. BAZANT: And was that done in Yellowstone  
11 County?

12 MR. HICKSON: Yes.

13 MS. BAZANT: Thank you.

14 THE COURT: And did you receive some money as a  
15 result of endorsing the back of those checks, Mr. Hickson?

16 MR. HICKSON: Yes.

17 THE COURT: How much money did you receive?

18 MR. HICKSON: Eight hundred and some dollars.  
19 Four fifty and four twenty-five I believe.

20 THE COURT: Okay. Do we have an issue with  
21 regard to restitution at all?

22 MR. SOUZA: May I have a moment, Your Honor?

23 THE COURT: You may.

24 (Whereupon, an off-the-record discussion took  
25 place between Mr. Souza and Ms. Bazant.)

1                   MR. SOUZA: Your Honor, we will stipulate that  
2                   restitution be paid in the amount of \$875 to Help For  
3                   Homeless Pets.

4                   THE COURT: Okay. Are you satisfied with the  
5                   services and advice of Ms. Bazant in this matter?

6                   MR. HICKSON: Yes.

7                   THE COURT: Do you feel you've had adequate  
8                   time to prepare a defense to the charge?

9                   MR. HICKSON: Yes.

10                  THE COURT: Do you acknowledge that no threats,  
11                  promises or representations have been made or agreements  
12                  reached, other than what we discussed here today?

13                  MR. HICKSON: Yes.

14                  THE COURT: The Court will accept your plea as  
15                  being knowingly and voluntarily made. And as I understand  
16                  it, we're proceeding to sentencing this afternoon?

17                  MR. SOUZA: Yes, Your Honor.

18                  THE COURT: State's recommendation -- well, it  
19                  is, I guess, as what was recited in the plea agreement; is  
20                  that correct?

21                  MR. SOUZA: Yes, Your Honor.

22                  MR. HICKSON: Unless you want to go less.

23                  THE COURT: Okay. And you agree the  
24                  recommendation from you, Ms. Bazant, as was recited in the  
25                  plea agreement?

1 MS. BAZANT: Yes, Your Honor.

2 THE COURT: Do you have anything you wish to  
3 say to the Court, Mr. Hickson, before I impose sentence?

4 MR. HICKSON: I'd just like to apologize for my  
5 stupidity.

6 THE COURT: Well, the Court's received and  
7 reviewed the presentence report that was completed some time  
8 ago in February of 2008, and you've got a very long criminal  
9 history, Mr. Hickson. And you've, looks like you failed on  
10 every probation or parole except for the last one. You've  
11 been to prison for five different occasions. Anyway, your  
12 criminal history certainly supports a sentence to the  
13 Montana State Prison, and it appears, based upon the  
14 circumstances of this offense and the terms of the plea  
15 agreement, that that agreement is appropriate. Therefore,  
16 the Court will sentence you to Montana State Prison for a  
17 period of 10 years. You are ordered to pay restitution in  
18 the amount of \$875 to Help For Homeless Pets. If you are  
19 placed in the community, you must comply with the rules set  
20 forth in this presentence report on pages 11, 12 and 13.  
21 Have you reviewed those, Mr. Hickson?

22 MR. HICKSON: Yes.

23 THE COURT: And if they contradict the  
24 Department of Corrections' rules, obviously the Department  
25 of Corrections' rules are what you will be under since you

1 will be an inmate. And if you're released to the community,  
2 you'll be on parole. So it seems like this is an  
3 appropriate way to resolve the issues in these three cases,  
4 therefore, the Court will follow that plea agreement.

5 MS. BAZANT: Your Honor, could we make one  
6 correction to the presentence report?

7 THE COURT: You could.

8 MS. BAZANT: And that is that Mr. Hickson was  
9 only sent to the pre-release one time and violated one time.

10 MR. HICKSON: I never violated previously. I  
11 got sent from Deer Lodge to the regional Great Falls, from  
12 the regional to Shelby, from Shelby to the pre-release  
13 center -- or from Shelby out and into the pre-release.

14 MS. BAZANT: So there was not a violation?

15 MR. HICKSON: No. It was only -- it got it  
16 down as I was to the pre-release center twice, I was only  
17 there once. The other was the regional jail.

18 THE COURT: And you're moving to dismiss those  
19 other cases, Mr. Souza?

20 MR. SOUZA: Yes. At this time, Your Honor, the  
21 State would move to dismiss Cause Numbers 08-101 and 08-114  
22 and also move to dismiss the persistent felony offender  
23 designation.

24 THE COURT: Those motions are granted, and you  
25 are remanded to the custody of the sheriff.

1 (Whereupon, the Court adjourned at 2:45 p.m.)  
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