

DA 18-0019

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 106N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSEPH L. JOHNSON,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. BDC 15-417
Honorable Elizabeth A. Best, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Joseph Llewellyn Johnson, Self-Represented, Shelby, Montana

For Appellee:

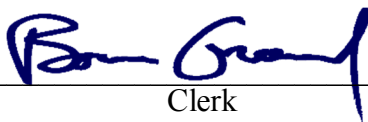
Timothy C. Fox, Montana Attorney General, Tammy K Plubell, Assistant
Attorney General, Helena, Montana

Joshua A. Racki, Cascade County Attorney, Great Falls, Montana

Submitted on Briefs: March 20, 2019

Decided: May 7, 2019

Filed:


Clerk

Justice Beth Baker 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 Joseph Llewellyn Johnson appeals the Eighth Judicial District Court's denial of his motion to withdraw his pleas. Johnson alleges he received ineffective assistance of counsel before entering the pleas. We affirm.

¶3 On August 21, 2015, the State charged Johnson with Count I, Sexual Servitude of Child, a felony, in violation of § 45-5-310(1), MCA, for actions that occurred in June 2015. The State filed an amended information, adding Count II, Sexual Servitude of Child, in violation of §§ 45-5-310(1) and -103, MCA, and Counts III and IV, Promoting Prostitution, felonies, in violation of § 45-5-602(1)(c) and (f), MCA. Johnson signed a plea agreement, agreeing to plead guilty to Amended Count III and *nolo contendere* to Amended Count IV, both felony charges of Aggravated Promotion of Prostitution, in violation of § 45-5-603(1)(b), MCA. In exchange, the State agreed to dismiss Counts I and II. Johnson signed an acknowledgment of his waiver of rights. The court held a hearing on the change of plea on June 13, 2016. At the hearing, the District Court informed Johnson of the maximum sentence for Amended Counts III and IV and the rights he was waiving by making his plea. The court sentenced Johnson in accordance with the plea agreement to

20 years with 7 years suspended on one count of Aggravated Promotion of Prostitution and to 20 years, all suspended, on the second count.

¶4 After his sentencing, Johnson filed a pro se motion to withdraw his guilty plea, maintaining that he involuntarily entered his guilty pleas as a result of ineffective assistance of counsel. Johnson argued that his trial counsel was ineffective for failing to move to dismiss Counts I and II, Sexual Servitude of Child, because the Legislature repealed § 45-5-310(1), MCA, effective July 1, 2015, before his plea agreement. The District Court denied Johnson's motion to withdraw his pleas, reasoning that Johnson intelligently, knowingly, and voluntarily entered his pleas. With regard to Johnson's claim of ineffective assistance of counsel, the court dismissed Johnson's claim, explaining: "Here, Johnson points to his lawyer's failure to move to dismiss Count I, which was based on a statute that has since been repealed. This argument is illogical. Count I was dismissed as part of the plea agreement, and Johnson did not plead guilty to it."

¶5 Johnson argues on appeal that his conviction cannot stand because the Legislature repealed the sexual servitude of children statute, § 45-5-310, MCA, before he pleaded guilty. *See* 2015 Mont. Laws ch. 285, § 28. Johnson maintains that the State charged him with a nonexistent criminal offense and that he received no actual benefit from the dismissal of the charges.

¶6 Contrary to Johnson’s argument, the 2015 Montana Legislature did not decriminalize sexual servitude of a child. The statute in effect at the time of his crimes, § 45-5-310, MCA (2013), entitled Sexual Servitude of Child, provided in part:

(1) A person commits the offense of sexual servitude of a child if the person purposely or knowingly:

(a) recruits, entices, solicits, isolates, harbors, transports, provides, obtains, or maintains through any means a child for the performance of commercial sexual activity; or

(b) benefits, financially or by receiving anything of value, from participation in a venture that has engaged in the offense of sexual servitude of a child.

The statute provided for a 100-year prison sentence with a mandatory 25-year minimum period of imprisonment. Section 45-5-310(2), MCA (2013).

¶7 The 2015 Legislature amended and moved the statute to § 45-5-704, MCA (2015), entitled Sexual Servitude. *See* 2015 Mont. Laws ch. 285. The new statute provides in pertinent part:

(1) A person commits the offense of sexual servitude if the person purposely or knowingly:

. . . .

(b) recruits, transports, transfers, harbors, receives, provides, obtains by any means, isolates, entices, maintains, or makes available a child for the purpose of commercial sexual activity.

The maximum penalty under § 45-5-704(1)(b), MCA (2015), is 25 years. Section 45-5-704(3)(b), MCA (2015).

¶8 Although the sentencing changed, the Legislature did not decriminalize the conduct for which the State charged Johnson under Counts I and II. *Compare* § 45-5-310(1)(a), MCA (2013), *with* § 45-5-704(1)(b), MCA (2015). The criminal offense of sexual

servitude of children was not repealed in Montana; it was moved to a different section in the code. The State had the authority to charge Johnson with Sexual Servitude of Child pursuant to § 45-5-310(1)(a), MCA (2013), for an offense that occurred prior to July 1, 2015.

¶9 As the District Court observed, Johnson did not plead guilty to Sexual Servitude of Child. Johnson pleaded guilty to Aggravated Promotion of Prostitution. Johnson argues that he may have been better able to make an informed choice whether he stood to benefit from the plea offer had he known about the statutory change. Clearly, however, Johnson benefited from the plea agreement: he was convicted of two felony offenses instead of four, and he received a sentence substantially less than the maximum penalty for the four charges, even if the 2015 statutory penalty were to apply.

¶10 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. We affirm.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR