FILED
06/14/2023
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 20-0197

SYNOPSIS OF THE CASE[1]

2023 MT 116, DA 22-0197: STATE OF MONTANA, by and through AUSTIN KNUDSEN, in his official capacity as Attorney General; and Eileen Joyce, in her official capacity as County Attorney for Silver Bow County, Plaintiff and Appellee, **v. RICHARD DENVER HINMAN,** Defendant and Appellant.

A majority of the Montana Supreme Court has held legislative amendments to the 2007 Sexual and Violent Offender Registration Act (Act) rendered the Act punitive in nature and therefore violated the ex post facto clause of the constitution if applied retroactively to offenses occurring prior to the amendments.

Hinman was convicted of sexual assault in 1994 and has served and discharged his criminal sentence on that conviction. In 2019, Hinman was charged with failing to register as a sexual offender under the Act. At the time Hinman was convicted in 1994, the Act required Hinman to maintain registration for 10 years. However, the legislature subsequently amended the Act's requirements to include more onerous steps and lengthier periods of registration. The legislature made these requirements retroactive and applied them to previously convicted registrants.

The Court held that numerous legislative amendments to the Act added restraints on registrants that significantly hinder their liberty and privacy. The characteristics of the amendments in 2007, 2013, 2015, and 2017 are emblematic of criminal punishment which cannot be applied retroactively to offenses occurring prior to the amendments without violating the constitution.

Two justices from the majority would have held that the Act also violated a person's constitutional right to have their civil rights restored after an offender is no longer being supervised in the criminal justice system. Two other justices from the majority agreed with this reasoning but did not believe the restoration of rights issue had been raised in the trial court.

Two justices dissented and would have concluded the amendments were not punitive in nature but were rather part of a civil regulatory scheme that could be applied retroactively without violating the constitution.

[1] This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.