

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0024

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MATTHEW ANDREW SOTTO,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, The Honorable John A. Kutzman, Presiding

APPEARANCES:

AUSTIN KNUDSEN
Montana Attorney General
TAMMY K PLUBELL
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
tplubell@mt.gov

JAMES M. SIEGMAN
Attorney at Law
501 Northpointe Parkway #114
Jackson, MS 39211-2303

ATTORNEY FOR DEFENDANT
AND APPELLANT

JOSH RACKI
Cascade County Attorney
MATTHEW ROBERTSON
Deputy County Attorney
121 4th Street North, Suite 2A
Great Falls, MT 59401

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUE 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 3

I. The offenses.....3

II. The change-of-plea hearing4

SUMMARY OF THE ARGUMENT 6

ARGUMENT..... 7

I. The standard of review.....7

II. Sotto’s claim that he did not voluntarily enter his guilty pleas is not properly before this Court because Sotto never moved the district court to withdraw his guilty pleas8

CONCLUSION11

CERTIFICATE OF COMPLIANCE.....12

TABLE OF AUTHORITIES

Cases

<i>In re B.H.</i> , 2018 MT 282, 393 Mont. 352, 430 P.3d 1006	10
<i>In re Hardy</i> , 188 Mont. 506, 614 P.2d 528 (1980)	8
<i>State v. Butler</i> , 272 Mont. 286, 900 P.2d 908 (1995)	8
<i>State v. Gunderson</i> , 2010 MT 166, 357 Mont. 142, 237 P.3d 74	10
<i>State v. Hoots</i> , 2005 MT 246, 330 Mont. 144, 127 P.3d 369	9
<i>State v. Martz</i> , 233 Mont. 136, 760 P.2d 65 (1988)	8
<i>State v. Prindle</i> , 2014 MT 173, 370 Mont. 478, 304 P.3d 712	8
<i>State v. Radi</i> , 250 Mont. 155, 818 P.2d 1203 (1991)	8
<i>State v. Sanders</i> , 1999 MT 136, 294 Mont. 539, 982 P.2d 10	9, 10
<i>State v. Wise</i> , 2009 MT 32, 349 Mont. 187, 203 P.3d 74	9, 10

Other Authorities

Montana Code Annotated

§ 46-16-105(2)	8, 10
§ 46-16-105(2)(a)-(c)	10

STATEMENT OF THE ISSUE

Whether Appellant's claim that he did not voluntarily enter his guilty plea and his request to withdraw his guilty plea are properly before this Court when Appellant did not request to withdraw his guilty plea in the district court and he has one year from when his conviction becomes final to do so.

STATEMENT OF THE CASE

On August 19, 2021, the State, by Information, charged Appellant Matthew Sotto (Sotto) with one count of felony sexual intercourse without consent (SIWOC) and one count of misdemeanor partner or family member assault (PFMA). (D.C. Doc. 3.) Court-appointed counsel Nathan Prohaska represented Sotto. (D.C. Doc. 11.) The district court scheduled a jury trial for December 13, 2021. (D.C. Doc. 9.) On December 7, 2021, Sotto moved the court to vacate the jury trial and schedule a change-of-plea hearing because the parties had reached a plea agreement. (D.C. Doc. 18.)

Pursuant to the plea agreement, Sotto agreed to plead guilty to both charges in exchange for the State's agreement to not make any sentencing recommendation. (D.C. Doc. 20, attached as App. A.) The State's agreement was contingent upon Sotto not committing any new offenses, showing up for all court

appearances, and cooperating with the presentence investigation (PSI). (App. A at 5.)

Sotto also signed and filed an acknowledgement of waiver of rights. (D.C. Doc. 19, attached as App. B.) Sotto acknowledged a lengthy list of rights he would be waiving by pleading guilty, including: any factual dispute that he committed the acts that constituted the elements of the offense; the possibility of being found guilty of a lesser offense; and the right to appeal his conviction. (App. B, ¶¶ 4, 6, and 11.) Sotto confirmed that he had discussed the consequences of his guilty plea with his attorney, as well as all possible defenses to the offenses the State had charged. Sotto asserted that he was satisfied with the services of his attorney and had no complaints about him. (App. B, ¶¶ 19-23.)

On January 4, 2022, the district court held a change-of-plea hearing, during which Sotto pled guilty to felony SIWOC and misdemeanor PFMA. (D.C. Doc. 24.) Prior to sentencing, the State moved to revoke Sotto's bond based on a new charge of felony strangulation of a partner or family member in Lewis and Clark County. (D.C. Doc. 30.) The district court revoked Sotto's bond and issued a bench warrant for his arrest. (D.C. Docs. 32-33.)

Sotto cooperated with the PSI and completed a sexual offender evaluation prior to sentencing. (D.C. Doc. 35.) The district court held a sentencing hearing on October 4, 2022. The district court sentenced Sotto to prison for 20 years with 10

years suspended for SIWOC, and 1 year in jail for PFMA, to run concurrently with the prison sentence. The district court designated Sotto a Level 2 sex offender and ordered him to complete phases 1 and 2 of the sex offender treatment program at Montana State Prison. (D.C. Doc. 50, attached to Appellant's Br. as App. B.)

Sotto never moved to withdraw his guilty pleas in the district court.

STATEMENT OF THE FACTS

I. The offenses¹

On June 17, 2021, Officer Brinka of the Great Falls Police Department received a referral from Adult Protective Services that H.B., who suffers from an intellectual disability, had reported that her boyfriend, Sotto, had been sexually abusing her, with the last abusive incident occurring on June 6, 2021. (D.C. Doc. 1 at 2.) In an interview with Officer Brinka, H.B. detailed repeated episodes during which Sotto had subjected her to nonconsensual sexual intercourse, which included forced anal intercourse and inserting other objects into H.B.'s anus, causing her pain. Sotto had used a funnel and a hose to pour household cleaner into her anus. (*Id.*) H.B. protested and cried out in pain. H.B. was not strong enough to escape

¹ Since Sotto pled guilty, the State relies upon the facts of the offense the State alleged in the affidavit supporting its motion seeking leave to file an Information. (D.C. Doc. 1.)

from Sotto. (*Id.* at 3.) During H.B.'s last encounter with Sotto, he pushed her down and she hit her head on the floor. Sotto would not let her get up. (*Id.*)

Sotto agreed to speak with Officer Brinka. Sotto claimed that every sexual act he did to H.B. was with her consent, including using a funnel and a hose to pour Windex into H.B.'s anus. Sotto admitted to having anal sex with H.B. on June 6, 2021, but maintained that it was with H.B.'s consent. (*Id.* at 3-4.)

II. The change-of-plea hearing

At the plea change hearing, Sotto testified that he understood he was under no obligation to plead guilty. (1/4/22 Tr. at 6.) Sotto acknowledged that he understood that by pleading guilty he was giving up his rights to be presumed innocent, to remain silent, to a jury trial, to a speedy trial, to require the State to prove each element of the charged offenses beyond a reasonable doubt, to summon witnesses, to waive any factual dispute that he committed the acts constituting the elements of the offenses, to be found guilty of a lesser offense, and to appeal any conviction. (*Id.* at 6-8.)

Sotto stated that there was nothing impacting his ability to enter a guilty plea. (*Id.* at 8.) He verified that no one had coerced or pressured him to enter into the plea agreement. (*Id.*) He affirmed that he and his counsel had discussed potential trial strategies and possible defenses at length but ultimately decided the

best course of action was for him to enter into the plea agreement and plead guilty. (*Id.* at 9.) He agreed that he, his father, and defense counsel had spent many hours discussing whether to proceed to trial or enter into a plea agreement. (*Id.* at 16.) He indicated he was satisfied with the services of defense counsel and had no complaints about defense counsel. (*Id.*)

Sotto stated that he understood the maximum penalties of the offenses and that the district court had the authority to sentence him up to the maximum sentence. (*Id.* at 16.) He also expressed his understanding that if he committed any new offense prior to sentencing, the prosecutor would then be free to recommend up to the maximum sentence. (*Id.* at 17.)

Before accepting Sotto's guilty pleas, the district court extensively explained the entire trial process to him, since that was his alternative to pleading guilty. (*Id.* at 10-15.) Sotto affirmed for the district court that he was waiving all the rights a trial afforded him. (*Id.*)

When defense counsel questioned Sotto about the elements of SIWOC, Sotto expressed some confusion about how he should answer. The district court instructed him to provide a truthful answer. (*Id.* at 19.) When defense counsel requested an opportunity to have a private discussion with Sotto, the district court encouraged it and indicated that it did not wish to rush Sotto into pleading guilty. (*Id.* at 20.) After the recess, defense counsel stated that he had spoken with Sotto

and Sotto wished to proceed with his plea change. (*Id.* at 21.) Sotto then admitted that he had forced the victim to have sexual intercourse with him. (*Id.* at 21-22.) He also admitted that he had pushed the victim down, causing her to hit her head on the floor, and he would not allow her to get up. (*Id.* at 22.) Further, he did not dispute that his actions had caused the victim pain. (*Id.*)

Sotto entered guilty pleas to SIWOC and PFMA. (*Id.* at 24-25.) The district court then stated:

All right. Based on the discussion you just had, with these two lawyers and with me and with Mr. Robertson, I find that you do understand what your trial related rights are. I find that you're knowingly and voluntarily and intelligently giving those up. I find that you're doing it as part of a strategy to control your risk of the worse outcome because even though—well, you definitely—you're benefiting from this because if you didn't have this plea agreement, Mr. Robertson could come in there and asked for a very harsh sentence and as a result of the way this has been negotiated, he's going to have to stay silent at the sentencing hearing. And then, the only one that will be in a position to make a recommendation is your defense lawyers and that's significant. And there's a factual basis for these pleas. So, these are valid, and I accept them.

(*Id.* at 25.)

SUMMARY OF THE ARGUMENT

The precedent is well established that a criminal defendant must first move to withdraw his guilty plea in the district court. This Court will not consider the voluntariness of a guilty plea for the first time on appeal when the defendant did

not request in the district court that he be allowed to withdraw his plea. Here, Sotto never moved the district court to withdraw his guilty pleas, so his claim that his guilty pleas were involuntarily entered, and that this Court should allow him to withdraw them, is not properly before this Court.

To the extent that Sotto superficially references the plain error review doctrine, that doctrine is unhelpful to him. Sotto has one year after his conviction becomes final to move to withdraw his guilty plea in the district court, which he should have done in the first place. Since Sotto has a remedy available to him in the district court, plain error review is unwarranted because failing to review his claim, improperly raised for the first time on appeal, will not result in a miscarriage of justice.

ARGUMENT

I. The standard of review

When the district court has denied an appellant's motion to withdraw his guilty plea, this Court reviews the district court's denial de novo because the ultimate question of whether a plea was voluntarily entered is a mixed question of law and fact. This Court reviews the district court's underlying factual findings regarding the voluntariness of the guilty plea to determine whether the findings are

clearly erroneous. *State v. Prindle*, 2014 MT 173, ¶ 16, 370 Mont. 478, 304 P.3d 712. Sotto, however, did not move to withdraw his guilty plea in the district court.

II. Sotto’s claim that he did not voluntarily enter his guilty pleas is not properly before this Court because Sotto never moved the district court to withdraw his guilty pleas.

For the first time on appeal, Sotto alleges that he did not voluntarily enter his guilty pleas in the district court. Sotto had a remedy available to him in the district court, but he failed to avail himself of the remedy. Montana Code Annotated § 46-16-105(2) allows a defendant to move to withdraw his guilty plea within one year after judgment becomes final. The statute further provides that the district court may allow a defendant to withdraw his guilty plea for “good cause shown.” *Id.*

Sotto’s claim, for the first time on appeal, that he did not voluntarily enter his guilty pleas is not properly before this Court because this Court has consistently held that a defendant must first raise his request to withdraw his guilty plea in the district court. *State v. Butler*, 272 Mont. 286, 292, 900 P.2d 908, 912 (1995), citing *State v. Radi*, 250 Mont. 155, 159, 818 P.2d 1203, 1206 (1991) (“Initially, the grant or denial of a motion to withdraw a guilty plea is within the sound discretion of the trial court.”); *State v. Martz*, 233 Mont. 136, 760 P.2d 65 (1988); *In re Hardy*, 188 Mont. 506, 614 P.2d 528 (1980).

More recently, in *State v. Hoots*, 2005 MT 246, 330 Mont. 144, 127 P.3d 369, Hoots argued on appeal that this Court should allow him to withdraw his guilty plea and proceed to trial with new counsel. *Id.* ¶ 25. Hoots contended that he was forced to plead guilty after the district court denied his request for new counsel. Hoots reasoned that he had to plead guilty to avoid proceeding to trial with an attorney with whom he could not communicate. *Id.* Despite Hoots's claim that at least one of his post-plea motions should be construed as a motion to withdraw his plea, this Court held that a request to withdraw a guilty plea must first be raised in the district court. *Id.* ¶ 28.

This matter is well settled. Also, the two cases Sotto primarily relies upon to convince this Court that he did not voluntarily enter his plea are cases where the defendants/appellants moved to withdraw their pleas in the district court, and the district court denied their motions. *See State v. Sanders*, 1999 MT 136, ¶¶ 7, 11, 15, 294 Mont. 539, 982 P.2d 10; *State v. Wise*, 2009 MT 32, ¶ 8, 349 Mont. 187, 203 P.3d 74.

And, although this Court should not consider the merits of Sotto's claim that his guilty pleas were involuntarily entered, raised for the first time on appeal, the two cases he primarily relies upon to support his assertion are factually distinguishable. In *Sanders*, the parties incorrectly informed Sanders that there were no lesser offenses available to him, the district court did not adequately

interrogate Sanders about the plea agreement, and the prosecutor breached the plea agreement by recommending a greater sentence than the plea agreement authorized. *Sanders*, ¶¶ 5-8. In *Wise*, there was no factual basis to support Wise's guilty plea to criminal mischief based on repairs he had completed on someone's roof. *Wise*, ¶¶ 1, 7, 17.

To the extent that Sotto suggests, by citing the standard for plain error in the standard of review section of his brief, that this Court can review his assertion that he involuntarily entered his guilty pleas under the doctrine of plain error review, Sotto is mistaken. First, merely citing the standard for plain error is insufficient to meet the heavy burden of proving that plain error review is warranted. This Court still requires that plain error be argued on appeal. *In re B.H.*, 2018 MT 282, ¶ 15, 393 Mont. 352, 430 P.3d 1006. A mere assertion that constitutional rights are implicated or that failing to review the claim would result in a manifest miscarriage of justice is insufficient to warrant plain error review. *State v. Gunderson*, 2010 MT 166, ¶ 100, 357 Mont. 142, 237 P.3d 74.

Second, as this Court has repeatedly recognized, Sotto has a statutory remedy allowing him to move to withdraw his guilty plea in the district court. Under Mont. Code Ann. § 46-16-105(2), Sotto has one year after his judgment becomes final to move to withdraw his guilty plea. His conviction does not become final until he has completed the appeal process. Mont. Code Ann. § 46-16-

105(2)(a)-(c). Consequently, Sotto cannot demonstrate that failing to review his claim would result in a miscarriage of justice since he can still move to withdraw his guilty pleas in the district court.

Finally, if this Court were to allow Sotto to circumvent the statutory process for moving to withdraw a guilty plea, and if this Court were to ignore its well-established precedent, other defendants will similarly challenge their guilty pleas for the first time on appeal.

CONCLUSION

For the reasons argued above, the State respectfully requests that this Court conclude Sotto's claim, raised for the first time on appeal, that he involuntarily entered his guilty pleas, is not properly before this Court, and deny Sotto's request that this Court allow him to withdraw his guilty pleas.

Respectfully submitted this 8th day of October, 2024.

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: /s/ Tammy K Plubell
TAMMY K PLUBELL
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2,586 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

/s/ Tammy K Plubell

TAMMY K PLUBELL

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APPENDICES

Plea Agreement, filed 12/14/21 (D.C. Doc. 20)..... Appendix A

Acknowledgment of Waiver of Rights by Plea of Guilty,
filed 12/14/21 (D.C. Doc. 19)Appendix B

CERTIFICATE OF SERVICE

I, Tammy K Plubell, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-08-2024:

Chad M. Wright (Attorney)
P.O. Box 200147
Helena MT 59620-0147
Representing: Matthew Andrew Sotto
Service Method: eService

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Representing: State of Montana
Service Method: eService

James M. Siegman (Attorney)
501 Northpointe Parkwy Apartment 114
Jackson MS 39211-2303
Representing: Matthew Andrew Sotto
Service Method: eService

Electronically signed by Janet Sanderson on behalf of Tammy K Plubell
Dated: 10-08-2024