

FILED

10/08/2024

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 24-0500



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 24-0500

FILED

OCT - 8 2024

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

A.Z.,

Petitioner,

v.

ORDER

MONTANA TWENTY-FIRST JUDICIAL  
DISTRICT COURT, RAVALLI COUNTY,  
HONORABLE HOWARD F. RECHT, Presiding,

Respondent.

Petitioner A.Z., via counsel, seeks a writ of supervisory control to reverse and vacate the August 1, 2024 Order Re Motion to Suppress of the Twenty-First Judicial District Court, Ravalli County, in Cause No. DJ-24-18, in which A.Z. is the defendant. At A.Z.'s request, we stayed the District Court matter pending the resolution of this petition. The State has responded in opposition to A.Z.'s petition. Hon. Howard F. Recht, presiding District Court Judge, has referred this Court to the order at issue, which sets forth the court's reasoning for its ruling.

On March 4, 2023, E.S. reported that A.Z. had sexually assaulted her. At the time, A.Z. was 17 years old. That evening, Sergeant Jarin Gassett went to A.Z.'s address, where he resided with his grandmother, to interview him. A.Z.'s grandmother introduced herself as A.Z.'s guardian and allowed Sergeant Gassett inside the home. Sergeant Gassett ultimately took A.Z.'s statement in the presence of A.Z.'s grandmother.

A.Z. later moved to suppress the statement on the basis that his grandmother was not his legal guardian. He argued that Sergeant Gassett failed to adequately notify A.Z.'s parent or guardian prior to taking his statement. However, the State alleged that Sergeant Gassett advised A.Z. of his right to notify his parent or guardian and that A.Z. waived that right, as permitted by § 41-5-331(2)(a), MCA. The District Court found that, prior to

questioning A.Z., Sergeant Gassett “thoroughly advised [A.Z.] of his Miranda rights, asked specifically if [A.Z.] wished to notify his parents, and [A.Z.] affirmatively waived those rights.” Thus, the court denied A.Z.’s motion to suppress. A.Z. then petitioned this Court for supervisory control of that ruling.

Supervisory control is an extraordinary remedy that may be invoked when the case involves purely legal questions and urgent or emergency factors make the normal appeal process inadequate. M. R. App. P. 14(3). The case must meet one of three additional criteria: (a) the other court is proceeding under a mistake of law and is causing a gross injustice; (b) constitutional issues of state-wide importance are involved; or (c) the other court has granted or denied a motion for substitution of a judge in a criminal case. M. R. App. P. 14(3)(a)-(c). Consistent with Rule 14(3), it is the Court’s practice to refrain from exercising supervisory control when the petitioner has an adequate remedy of appeal. *E.g.*, *Buckles v. Seventh Jud. Dist. Ct.*, No. OP 16-0517, 386 Mont. 393, 386 P.3d 545 (table) (Oct. 18, 2016); *Lichte v. Mont. Eighteenth Judicial Dist. Court*, No. OP 16-0482, 385 Mont. 540, 382 P.3d 868 (table) (Aug. 24, 2016).

Here, A.Z. asserts the District Court is proceeding under an error of law and that this is “an urgent issue that involves issues of statewide importance.” However, Rule 14(3) requires, in part, that the case must involve purely legal questions. Here, A.Z. asks this Court to review a ruling that is not purely one of law, as A.Z. alleges that “law enforcement did not abide by the mandates of [§ 41-5-331, MCA] and failed to inform [him] of his right to have his parent present at the interrogation.”

Questions of fact are not susceptible to review on supervisory control. *Alford v. Mont. Fifteenth Jud. Dist. Ct.*, No. OP 22-0204, 409 Mont. 555, 512 P.3d 1173 (May 3, 2022) (supervisory control is proper only in the Court’s discretion and upon affirmative showing that the lower court is proceeding under a manifest mistake of law involving purely legal questions not dependent on disputed material facts); *Barrus v. Mont. First Jud. Dist. Ct.*, 2020 MT 14, ¶¶ 17-20, Mont. 353, 456 P.3d 577 (supervisory control unavailable if matter does not involve purely legal questions). In this case, A.Z.’s petition would



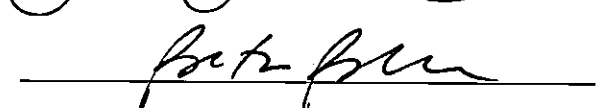

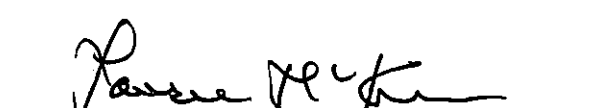
require us to make a factual determination as to whether Sergeant Gassett informed him of his rights, thus making this dispute unsuitable for disposition via writ.

We have determined that A.Z. has failed to demonstrate that the normal appeal process is inadequate in this instance, and this matter is not susceptible to supervisory control pursuant to M. R. App. P. 14(3) because the issue A.Z. presents is not purely legal.

IT IS THEREFORE ORDERED that A.Z.'s Petition for a Writ of Supervisory Control is DENIED and DISMISSED.

The Clerk is directed to provide immediate notice of this Order to counsel for Petitioner, all counsel of record in the Twenty-First Judicial District Court, Ravalli County, Cause No. DJ-24-18, and the Honorable Howard F. Recht, presiding.

DATED this 8<sup>th</sup> day of October, 2024.

  
  
  
  
  
Justices