

SUMMARY STATEMENT

State v. Colton Merrill

Docket Nos. 44882, 44823, & 44824

In a case arising out of Bingham County, the Court of Appeals affirmed the district court's orders revoking Colton Merrill's probation and affirmed his judgment of conviction and sentence for felony fleeing or attempting to elude a peace officer. Merrill pled guilty to two separate counts of burglary. Following sentencing, the district court suspended Merrill's sentences and placed him on probation. Pursuant to a plea agreement, Merrill later pled guilty to an unrelated charge of felony fleeing or attempting to elude a peace officer. The district court sentenced Merrill to a unified term of five years, with a minimum period of confinement of two years, to run concurrently with his two burglary sentences. Merrill also admitted to violating several of the terms of his probation, and the district court revoked probation and ordered execution of Merrill's burglary sentences. For the first time on appeal, Merrill asserts that the prosecutor breached the plea agreement by making comments at sentencing that were fundamentally at odds with the State's agreement to recommend retained jurisdiction.

The Court of Appeals held that Merrill failed to meet his burden of showing a clear violation of an unwaived constitutional right resulting from an implied breach of the plea agreement or that there is a reasonable possibility that the prosecutor's comments affected the district court's sentencing decision. The prosecutor recommended retained jurisdiction as the State was required to do under the plea agreement, and the plea agreement did not preclude the State from arguing against probation. Further, Merrill failed to show that defense counsel's lack of an objection was not a tactical decision and failed to show a reasonable possibility that the district court would have retained jurisdiction absent the prosecutor's comments.