

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 18-0314

---

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JAMES RONALD WILSON,

Defendant and Appellant.

---

**BRIEF OF APPELLEE**

---

On Appeal from the Montana Sixteenth Judicial District Court,  
Rosebud County, The Honorable Nickolas C. Murnion, Presiding

---

APPEARANCES:

TIMOTHY C. FOX  
Montana Attorney General  
MADISON L. MATTIOLI  
Assistant Attorney General  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401  
Phone: 406-444-2026  
Fax: 406-444-3549  
mlmattioli@mt.gov

JAMES RONALD WILSON  
ID # 3008003  
50 Cross Roads Dr.  
Shelby, MT 59474

DEFENDANT AND APPELLANT  
PRO SE

KRISTINE WHITE  
Rosebud County Attorney  
1200 Main Street  
Forsyth, MT 59327

ATTORNEYS FOR PLAINTIFF  
AND APPELLEE

## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
ISSUE PRESENTED .....	1
STATEMENT OF THE CASE AND THE FACTS .....	1
STANDARD OF REVIEW .....	3
SUMMARY OF ARGUMENT .....	3
ARGUMENT.....	4
The district court correctly dismissed Wilson’s second petition for postconviction relief .....	4
CONCLUSION .....	9
CERTIFICATE OF COMPLIANCE.....	9

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Kelly v. State</i> , 2013 MT 21, 368 Mont. 309, 300 P.3d 120 .....	8
<i>State v. Mallak</i> , 2005 MT 49, 326 Mont. 165, 109 P.3d 209 .....	8
<i>State v. Rensvold</i> , 2006 MT 146, 332 Mont. 392, 139 P.3d 154 .....	3
<i>State v. Root</i> , 2003 MT 28, 314 Mont. 186, 64 P.3d 1035 .....	5
<i>State v. Sanchez</i> , 2008 MT 27, 341 Mont. 240, 177 P.3d 444 .....	3
<i>State v. Wilson</i> , 2013 MT 70, 369 Mont. 282, 297 P.3d 1208 .....	1
<i>Wilkes v. State</i> , 2015 MT 243, 380 Mont. 388, 355 P.3d 755 .....	3
<i>Wilson v. Fender</i> , 391 Mont. 538, 414 P.3d 757 (2018) .....	2

### **Other Authorities**

#### **Montana Code Annotated**

§ 46-16-607(2) .....	6
§ 46-21-102 .....	4, 7
§ 46-21-102(1) .....	5
§ 46-21-104(1)(c) .....	8
§ 46-21-104(2) .....	8
§ 46-21-105(1)(b) .....	6
§ 46-21-105(2) .....	5, 7

## **ISSUE PRESENTED**

Whether the district court correctly denied Appellant's second petition for postconviction relief.

## **STATEMENT OF THE CASE AND THE FACTS**

A jury convicted Wilson of negligent homicide, deliberate homicide, and attempted deliberate homicide following a shooting at the Whiskey Gulch Saloon in Colestrip, Montana, on December 10, 2009. (D.C. Doc. 32 at 2, attached as App. A.) This Court affirmed Wilson's conviction in an opinion dated March 19, 2013. *State v. Wilson*, 2013 MT 70, 369 Mont. 282, 297 P.3d 1208.

This Court summarized the background facts of Wilson's case:

Wilson was drinking at the Whiskey Gulch Saloon in Colstrip, Montana, on December 10, 2009. Jason Burnett, Spencer Benson, Heath Becker, Terran Harris and a group of friends also were at Whiskey Gulch Saloon to celebrate Burnett's recent engagement. Burnett's family owned the saloon. Wilson started a fistfight with Harris. Burnett and others helped to break up the fight. Burnett ordered Wilson to leave.

Wilson returned to the saloon approximately thirty minutes later with a gun. Becker was standing outside the saloon near the back deck. Wilson killed Becker with a shot to his head. Benson also was outside the saloon near his own car. Wilson killed Benson with a shot to his chest. Wilson then entered the saloon and walked toward Burnett and his friends. Wilson shot Burnett in the head, injuring, but not killing Burnett. Harris and others disarmed Wilson.

The State charged Wilson with deliberate homicide.

*Id.* at ¶¶ 4-6.

Wilson filed his first petition for postconviction relief on September 23, 2013, asserting eight claims of ineffective assistance of counsel (IAC). (D.C. Doc. 1.) The district court ordered the State to respond. (D.C. Doc. 19.) Wilson's trial counsel also responded. (D.C. Doc. 20.) The district court denied Wilson's petition on March 24, 2014. (D.C. Doc. 21.) This Court denied Wilson's petition for an out-of-time appeal. *Wilson v. State*, No. DA 14-0508, Order (Mont. Aug. 19, 2014). Wilson then petitioned for habeas corpus relief on February 5, 2018, which this Court denied on February 20, 2018. *Wilson v. Fender*, 391 Mont. 538, 414 P.3d 757 (2018).

That same day, February 20, 2018, he filed his second petition for postconviction relief in the district court. (D.C. Docs. 29, 30.) Wilson again alleged that his trial counsel provided him ineffective assistance, this time for failing to offer a lesser included offense or justifiable use of force instruction on the second count of deliberate homicide. (D.C. Doc. 29.) He also alleged "newly discovered evidence" proving he did not commit the criminal conduct for which he was convicted because "[i]t was shown to [him] that no lesser included offense was in [his] jury instructions on January of 2018." (*Id.*) He claimed his "[a]ttorney never went over this with [him and he] was unaware of it." (*Id.*)

The district court dismissed Wilson's second petition in an order dated April 18, 2018, because he could have reasonably raised these claims for relief in

his original petition. (D.C. Doc. 32.) Wilson appeals from the dismissal of his second petition for postconviction relief. (Appellant's Br.)

### **STANDARD OF REVIEW**

This Court reviews a district court's denial of a petition for postconviction relief to determine whether its findings of fact are clearly erroneous, and its conclusions of law are correct. *Wilkes v. State*, 2015 MT 243, ¶ 9, 380 Mont. 388, 355 P.3d 755. This Court will uphold a district court's correct decision, regardless of the stated rationale. *State v. Sanchez*, 2008 MT 27, ¶ 48, 341 Mont. 240, 177 P.3d 444 (citing *State v. Rensvold*, 2006 MT 146, ¶ 34, 332 Mont. 392, 139 P.3d 154).

### **SUMMARY OF ARGUMENT**

Wilson could have raised his lesser included instruction claim both on direct appeal and in his first petition for postconviction relief. Moreover, he raised numerous claims of ineffective assistance of counsel in his first petition for postconviction relief. As such, he is procedurally barred from raising these claims in a second petition for postconviction relief, and the district court correctly dismissed his second petition. Additionally, he has failed to present newly discovered evidence that would prove he did not engage in the criminal conduct for

which he was convicted and, as such, his second petition is subject to the one-year limitations period and is time-barred.

### **ARGUMENT**

**The district court correctly dismissed Wilson’s second petition for postconviction relief.**

Montana Code Annotated § 46-21-102 provides:

(1) Except as provided in subsection (2), a petition for the relief referred to in 46-21-101 may be filed at any time within 1 year of the date that the conviction becomes final. A conviction becomes final for purposes of this chapter when:

(a) the time for appeal to the Montana supreme court expires;

(b) if an appeal is taken to the Montana supreme court, the time for petitioning the United States supreme court for review expires; or

(c) if review is sought in the United States supreme court, on the date that that court issues its final order in the case.

(2) A claim that alleges the existence of newly discovered evidence that, if proved and viewed in light of the evidence as a whole would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted, may be raised in a petition filed within 1 year of the date on which the conviction becomes final or the date on which the petitioner discovers, or reasonably should have discovered, the existence of the evidence, whichever is later.

A district court must dismiss “a second or subsequent petition by a person who has filed an original petition unless the second or subsequent petition raises

grounds for relief that could not reasonably have been raised in the original or an amended original petition.” Mont. Code Ann. § 46-21-105(1)(b). Additionally,

[w]hen a petitioner has been afforded the opportunity for a direct appeal of the petitioner’s conviction, grounds for relief that were or could reasonably have been raised on direct appeal may not be raised, considered, or decided in a proceeding brought under this chapter. Ineffectiveness or incompetence of counsel in proceedings on an original or an amended original petition under this part may not be raised in a second or subsequent petition under this part.

Mont. Code Ann. § 46-21-105(2). Montana Code Annotated § 46-21-102(1)

“applies a one-year period of limitation on the initiation of all postconviction proceedings, including those initiated by second or subsequent petitions.” *State v. Root*, 2003 MT 28, ¶ 16, 314 Mont. 186, 64 P.3d 1035.

In response to Wilson’s original petition filed in 2013, his trial counsel, Edmund F. Sheehy, Jr., submitted an affidavit. (D.C. Doc. 20, Attached as App. B.) Counsel stated that in a face-to-face meeting with Wilson at the Rosebud County Detention Center, he

advised [Wilson] that that the best that could be done, at trial, would be for a jury to convict him of the lesser included offense of [two] counts of mitigated deliberate homicide and one count of attempted mitigated deliberate homicide, and petitioner would spend a substantial part of the rest of his life, in prison. Petitioner was dejected, at that stage, and never gave affiant permission to seek a plea agreement to that effect, or of any type. At trial, petitioner would not allow affiant to request lesser included instructions, on mitigated, or attempted mitigated deliberate homicide. The verdict form (Exhibit 1 hereto) shows what petitioner allowed affiant to offer as lesser instructions. Furthermore, at trial, in discussing what affiant could argue, in closing, petitioner agreed to let him argue, if



petitioner was guilty of anything, it was negligent homicide, on Count I, which the jury convicted him of, and aggravated assault, on Count III, where the jury convicted him of what was alleged.

(App. B at 3-4, ¶ 12, dated March 10, 2014.)

The attached verdict form does not contain a lesser included offense on Count II, deliberate homicide. (App. B at 11-12.) The district court concluded,

It is clear from Sheehy's affidavit, the issue of [lesser] included offenses was thoroughly reviewed with Wilson and that he made his choices with regard to the submission of a [lesser] included offense for Count II. Wilson did not make a proper request for such an instruction and the Court was not required to issue such an instruction in the absence of a proper request. [Mont. Code Ann. § 46-16-607(2).] It is also not clear that the evidence would have supported a [lesser] included instruction for negligent homicide. The issue of justifiable use of force is an affirmative defense and is not a [lesser] included offense.

(D.C. Doc. 32 at 5.)

On appeal, Wilson has failed to demonstrate that the district court's findings are clearly erroneous or that its conclusions of law are incorrect. Wilson asserts that "nowhere in the first post-conviction did Wilson claim relief on [lesser] included offense." (Appellant's Br. at 6.) However, Mont. Code Ann. §§ 46-21-105(1)(b) and (2) make clear that this is not the standard. A district court must dismiss "a second or subsequent petition by a person who has filed an original petition unless the second or subsequent petition raises grounds for relief that *could not reasonably have been raised* in the original or an amended original petition." Mont. Code Ann. § 46-21-105(1)(b) (emphasis added). The affidavit and

verdict form from 2013-2014 demonstrate that Wilson reasonably could have raised this issue in his original petition. Whether or not the evidence adduced at trial would have supported a lesser included instruction is record-based and could have been raised in Wilson's direct appeal.

Moreover, Wilson raised seven claims of ineffective assistance against his trial counsel in his original petition. "Ineffectiveness or incompetence of counsel in proceedings on an original or an amended original petition under this part may not be raised in a second or subsequent petition under this part." Mont. Code Ann. § 46-21-105(2). Wilson also appealed his conviction, thus, "grounds for relief that were or could reasonably have been raised on direct appeal may not be raised, considered, or decided in a proceeding brought under this chapter." Mont. Code Ann. § 46-21-105(2). Wilson has availed himself of all available means of challenging his conviction absent the discovery of new evidence establishing he did not engage in the criminal conduct for which he was convicted.

Acknowledging this, Wilson asserted in the district court that, "[i]t was shown to [him] that no lesser included offense was in [his] jury instructions on January of 2018." (D.C. Doc. 29.) He claimed his "[a]ttorney never went over this with [him and he] was unaware of it." (*Id.*) However, as the district court concluded, this claim is without merit. Not only is it contradicted by Sheehy's affidavit, this does not qualify as newly discovered evidence as it does not prove

that he did not commit the criminal conduct for which he was convicted. As such, the district court did not err in dismissing Wilson's second petition for postconviction relief, as it was subject to the one-year limitations period.

*Root*, ¶ 16.

The remaining claims Wilson raises on appeal concerning Colstrip Police Chief Lt. Larry Reinlasoder (Appellant's Br. at 8-10, 15-23) were not presented to the district court, and this Court should decline to consider them. This Court has emphasized repeatedly that it is fundamentally unfair to fault the district court for failing to address correctly an issue it was never given an opportunity to consider. *See, e.g., State v. Mallak*, 2005 MT 49, ¶ 31, 326 Mont. 165, 109 P.3d 209 (citation omitted). Even if "evidence" regarding Lt. Reinlasoder's professional misconduct did not come to light until after Wilson had filed his first petition for postconviction relief, it is still not "newly discovered evidence" proving that Wilson did not discharge a firearm in a bar, killing two people and seriously injuring another. Wilson's appellate claims are based entirely on his own conclusory statements and do not present any prima facie postconviction claims. *See* Mont. Code Ann. §§ 46-21-104(1)(c), (2); *Kelly v. State*, 2013 MT 21, ¶ 9, 368 Mont. 309, 300 P.3d 120.

## **CONCLUSION**

The State respectfully requests that this Court affirm the district court's order dismissing Wilson's second petition for postconviction relief and again affirm his convictions and sentence.

Respectfully submitted this 31st day of January, 2019.

TIMOTHY C. FOX  
Montana Attorney General  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401

By: /s/ *Madison L. Mattioli*  
MADISON L. MATTIOLI  
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 2,048 words, excluding certificate of service and certificate of compliance.

/s/ *Madison L. Mattioli*  
MADISON L. MATTIOLI

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 18-0314

---

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JAMES RONALD WILSON,

Defendant and Appellant.

---

**APPENDIX**

---

D.C. Doc. 32..... Appendix A

D.C. Doc. 20.....Appendix B

## **CERTIFICATE OF SERVICE**

I, Madison L. Mattioli, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 01-31-2019:

James Ronald Wilson (Appellant)  
#3008003  
Crossroads Correctional Center  
50 Crossroads Drive  
Shelby MT 59474  
Service Method: Conventional

C. Kristine White (Attorney)  
Rosebud County Attorney  
P.O. Box 69  
Forsyth MT 59327  
Representing: State of Montana  
Service Method: Conventional

Electronically signed by Beverly Holnbeck on behalf of Madison L. Mattioli  
Dated: 01-31-2019