

DA 18-0210

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 53N

AMANDA PARRISH,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DV 16-903
Honorable Mary Jane Knisely, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Amanda Parrish, Self-Represented, North Platte, Nebraska

For Appellee:

Timothy C. Fox, Montana Attorney General, Micheal S. Wellenstein,
Assistant Attorney General, Helena, Montana

Scott Twito, Yellowstone County Attorney, Christopher A. Morris,
Deputy County Attorney, Billings, Montana

Submitted on Briefs: January 30, 2019

Decided: March 5, 2019

Filed:


Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Amanda Rae Parrish (Parrish) appeals from an order of the Thirteenth Judicial District Court, Yellowstone County, dismissing her petition for postconviction relief. We affirm.

¶3 On September 28, 2014, Billings Police Department (BPD) received a report of a man threatening hotel staff and refusing to leave. Officer Sanders responded to the scene and observed a silver Dodge Challenger, which he recognized as belonging to Michael Ray Hinshaw (Hinshaw). After hearing a description of the suspect, Officer Sanders realized it was consistent with Hinshaw's appearance. Officer Stevens and additional BPD officers located Hinshaw's vehicle, initiated a stop, and removed Hinshaw and his female passenger from the vehicle. The passenger identified herself as Jessica Edwards, but later admitted her real name was Amanda Rae Parrish. Parrish consented to a search of her purse, where the officers located a Clonazepam pill.¹

¹ At the time, there was also an outstanding arrest warrant for Parrish out of Yellowstone County Justice Court.

¶4 The State charged Parrish with criminal possession of dangerous drugs, a felony, and obstructing a peace officer, a misdemeanor. Parrish pleaded not guilty to both charges. The District Court set Parrish's bond at \$3,000 and set conditions for her release, including that she wear a drug patch. On October 23, 2014, Parrish posted bond, but failed to comply with the drug patch requirement. Following a petition to revoke bond, the District Court issued an arrest warrant and set bond at \$5,000. Parrish was arrested on November 18, 2014, and appeared on the warrant on November 20, 2014.

¶5 On October 24, 2014, the State sent an expedited plea offer to Parrish's attorney. The offer provided that Parrish had until December 4, 2014, to accept the offer and stipulate that the pill was Clonazepam.² The State sought to have Parrish designated a Persistent Felony Offender (PFO) per § 46-18-501, MCA (2013). The request relied on a prior felony conviction and a 2014 Washington State judgment. On December 4, 2014, Parrish accepted the plea agreement and pleaded guilty on both counts. She signed a written acknowledgement of rights and stated:

I am guilty because I did the following: On or about September 28, 2014[,] in Yellowstone County[,] Montana, I was knowingly in possession of a Clonazepam pill and hindered a law enforcement officer's investigation [b]y not telling him my correct name.

Parrish posted bond on December 18, 2014. On December 30, 2014, the District Court issued a warrant for Parrish for failure to comply with drug patch requirement. Parrish also failed to appear for her January 14, 2015 presentence investigation interview. On January 20, 2015, Parrish was arrested on the warrant. On January 30, 2015, Parrish

² The offer specifically required Parrish to waive testing of the suspected drug by the State Crime Lab.

posted bond again and was released on the condition that she acquire and maintain the drug patch. On February 9, 2015, the District Court issued another warrant for Parrish's arrest for failure to comply with the drug patch; bond was set at \$20,000. On March 19, 2015, Parrish failed to appear for her sentencing. Parrish's counsel had filed two motions to continue the hearing asserting that Parrish was in Great Falls and unable to make it to Billings for sentencing. As a result of her failure to appear for sentencing, the State charged Parrish with one count of bail-jumping, a felony. Parrish was arrested again on April 5, 2015.

¶6 On April 7, 2015, Parrish pleaded not guilty to bail-jumping. The State and defense counsel entered an agreement to resolve both cases whereby the State agreed to recommend dismissal of the bail-jumping case and Parrish agreed to be sentenced to five years with the Department of Corrections (DOC) as a PFO. On May 22, 2015, Parrish appeared before the District Court and was sentenced to five years with the DOC as a PFO. The District Court also imposed a six-month commitment to the Yellowstone County Detention Facility for the obstruction charge, to run concurrently with the DOC sentence, and ordered Parrish to pay a \$1,000 fine. On August 7, 2015, Parrish appealed the sentence. Parrish's counsel eventually withdrew, asserting that there were no valid issues for appellate review. This Court agreed, and, on March 1, 2016, Parrish's appeal was dismissed.³

³ *State v. Parrish*, No. DA 15-0471, Or. (Mont., Mar. 13, 2016).

¶7 On June 27, 2016, Parrish filed a petition for postconviction relief, asserting she received ineffective assistance of counsel because trial counsel failed to: (1) file a motion to suppress and dismiss; (2) file a formal motion to withdraw her guilty pleas; (3) argue that Clonazepam is not a dangerous drug; (4) argue law enforcement lacked probable cause to arrest and detain her and to search her purse; and (5) failed to object to the PFO designation. Additionally, Parrish argues her appellate counsel was ineffective and her petition to withdraw her guilty pleas should be granted.⁴

¶8 This Court reviews a district court’s denial of a petition for postconviction relief to determine whether the court’s findings of fact are clearly erroneous and whether its conclusions of law are correct. *Heath v. State*, 2009 MT 7, ¶ 13, 348 Mont. 361, 202 P.3d 118. An ineffective assistance of counsel claim presents mixed questions of law and fact which this Court reviews de novo. *Heath*, ¶ 13.

¶9 A petition for postconviction relief must “identify all facts supporting the grounds for relief set forth in the petition and have attached affidavits, records, or other evidence establishing the existence of those facts.” Section 46-21-104(1)(c), MCA; *Herman v. State*, 2006 MT 7, ¶ 15, 330 Mont. 267, 127 P.3d 422. A district court may dismiss a petition for postconviction relief without holding an evidentiary hearing if the procedural threshold set forth in § 46-21-104(1)(c), MCA, is not satisfied. *Herman*, ¶ 15. Mere allegations do not constitute the “evidence” contemplated by § 46-21-104(1)(c), MCA, “nor are unsupported allegations sufficient to entitle a petitioner to an evidentiary

⁴ The District Court consolidated Parrish’s requests to withdraw her guilty pleas with her petition for postconviction relief in the interest of judicial efficiency.

hearing.” *State v. Finley*, 2002 MT 288, ¶ 9, 312 Mont. 493, 59 P.3d 1132. Section 46-21-104(1)(c), MCA, specifically requires that a claim of ineffective assistance of counsel must be grounded on facts in the record—mere conclusory allegations will not suffice. *Finley*, ¶ 9.

¶10 The State asserts, and we agree, that Parrish’s petition failed to comply with the requirements of § 46-21-104, MCA. The District Court noted that “[n]owhere in 101 pages [of briefing] does Parrish assert any *facts supporting the grounds for relief*. Instead, she speculates, argues, and explains her side of the story.” (Emphasis in original.) Parrish’s petition outlines numerous arguments, including her assertions that the BPD lacked probable cause to both stop Hinshaw’s vehicle and to arrest/detain her. However, as the District Court pointed out, Parrish’s arguments are not supported by “attached affidavits, records, or other evidence establishing the existence of those facts,” as required by § 46-21-104(1)(c), MCA. Rather, Parrish’s assertions are bolstered only by her personal statements and characterizations of the events. Parrish’s statements are mere conclusory allegations set forth in an attempt to relitigate the underlying criminal case. Parrish’s arguments fail to meet the demands of § 46-21-104(1)(c), MCA, and therefore the District Court did not err when it dismissed her petition for postconviction relief.

¶11 We agree with the District Court’s analysis that Parrish’s claims of ineffective assistance of counsel are meritless. However, considering Parrish’s petition did not meet the procedural prerequisites set forth in § 46-21-104(1)(c), MCA, and the District Court

was not required to engage in any analysis on the merits, we need not address the substance of these allegations. *Finley*, ¶ 14.

¶12 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶13 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JIM RICE

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ LAURIE McKINNON