

DA 18-0314

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 85N

JAMES RONALD WILSON,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Sixteenth Judicial District,
In and For the County of Rosebud, Cause No. DV 13-18
Honorable Nickolas C. Murnion, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

James Ronald Wilson, Self-Represented, Shelby, Montana

For Appellee:

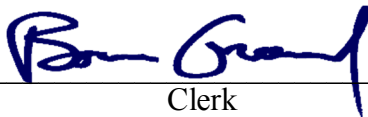
Timothy C. Fox, Montana Attorney General, Madison L. Mattioli, Assistant
Attorney General, Helena, Montana

Kristine White, Rosebud County Attorney, Forsyth, Montana

Submitted on Briefs: March 20, 2019

Decided: April 9, 2019

Filed:


Clerk

Justice Beth Baker 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 James Ronald Wilson appeals a Sixteenth Judicial District Court, Rosebud County, order denying his second petition for postconviction relief because he could have reasonably raised the issue in his first postconviction relief petition. We affirm.

¶3 Wilson was convicted by a Rosebud County jury of negligent homicide, deliberate homicide, and aggravated assault after he shot three people outside a bar in Colstrip in 2009. Wilson appealed his conviction to this Court, and we affirmed. *State v. Wilson*, 2013 MT 70, 369 Mont. 282, 297 P.3d 1208. Wilson filed his first petition for postconviction relief in 2013, raising seven claims of ineffective assistance of counsel and one claim of unlawful removal of evidence. The State responded, and Wilson's trial counsel, Edmund F. Sheehy, Jr., submitted an affidavit. The District Court denied the petition, and this Court denied an out-of-time appeal. Wilson then petitioned this Court for habeas corpus relief, which was denied. Wilson filed a second postconviction relief petition in February 2018, alleging ineffective assistance of counsel for his trial counsel's failure to seek instructions on the lesser included offense of negligent homicide or justifiable use of force as to Count II, deliberate homicide. The District Court referred to

Sheehy's affidavit, which described specifically his discussions with Wilson about lesser included offenses and Wilson's refusal to allow Sheehy to argue lesser included offenses, except what was shown on the verdict form. The District Court held that Wilson could have raised this issue in his first postconviction relief petition, and it was therefore procedurally barred pursuant to § 46-21-105(1)(b) and (2), MCA.

¶4 Wilson argues on appeal that his conviction of deliberate homicide resulted from Sheehy's ineffectiveness when he failed to request the lesser included offense instructions. Wilson also raises a new claim on appeal about the incompetency and professional misconduct of Colstrip Police Chief Larry Reinlasoder, the facts of which, he alleges, did not come to light until after Wilson's 2011 conviction.

¶5 Section 46-21-102(1), MCA, provides that a petition for postconviction relief may be filed at any time within one year of the date that the conviction becomes final. A conviction becomes final 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.

Section 46-21-102(1), MCA. The petition may be filed more than one year after a conviction becomes final if a claim 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."

Section 46-21-102(2), MCA. Such a claim may be raised when the petitioner discovers, or reasonably should have discovered, the existence of the evidence. Section 46-21-102(2), MCA. 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.” Section 46-21-105(1)(b), MCA.

¶6 Sheehy stated in his affidavit that he advised Wilson in a face-to-face meeting at the Rosebud County Detention Center that his best option 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 homicide. Sheehy stated that Wilson was “dejected, at that stage,” and that Wilson never gave Sheehy permission to seek a plea agreement to that effect, or of any type. Sheehy advised further that Wilson would not allow him to request lesser included instructions on mitigated or attempted mitigated deliberate homicide at trial. Sheehy stated that the verdict form shows what Wilson did allow Sheehy to offer as lesser included offense instructions. The verdict form did not include a lesser included offense on Count II, deliberate homicide.

¶7 The District Court concluded that it was clear from Sheehy’s affidavit that lesser included offenses were thoroughly reviewed with Wilson. Although Wilson maintains on appeal that “nowhere in the first post-conviction did Wilson claim relief on [lesser] included offense,” the standard is not whether it was raised in the first postconviction relief petition. Rather, a district court must dismiss a second petition unless the second petition

raises grounds for relief “that could not reasonably have been raised” in the first. Section 46-21-105(1)(b), MCA. The verdict form and Sheehy’s affidavit—submitted in conjunction with Wilson’s first petition—demonstrate that Wilson reasonably could have included this issue in his first petition with the seven other ineffective assistance of counsel claims that he raised. The District Court properly dismissed Wilson’s second postconviction relief petition because he reasonably could have raised the issue in his first petition.

¶8 Wilson’s claims in the second petition also are barred by the statutory limitations period. The one-year limit on initiating postconviction proceedings applies to all proceedings, including those initiated by a second petition. *State v. Root*, 2003 MT 28, ¶ 16, 314 Mont. 186, 64 P.3d 1035. A postconviction petition may be filed more than one year after a conviction becomes final only if the new claim alleges existence of newly discovered evidence that would establish actual innocence. Section 46-21-102(2), MCA. Wilson filed his second petition for postconviction relief nearly five years after this Court affirmed his conviction. Wilson’s petition thus may be excepted from the one-year statute of limitations only if he shows newly discovered evidence of his actual innocence. Wilson alleged that he did not learn that there was not a lesser included offense in his jury instructions until January 2018. The District Court properly found this claim without merit because it is clear from Sheehy’s affidavit that lesser included offenses were discussed. What’s more, Wilson was present at trial when the jury was instructed. Wilson argues further that he discovered after his conviction that Reinlasoder falsified information on his

employment application. Viewing the evidence as a whole, Wilson’s allegation that Reinlasoder engaged in professional misconduct unrelated to Wilson’s case is not evidence of Wilson’s actual innocence of negligent homicide, deliberate homicide, or aggravated assault. Wilson does not allege the existence of newly discovered evidence that would establish that he “did not engage in the criminal conduct for which [he] was convicted.” Section 46-21-102(2), MCA. Wilson therefore cannot file a postconviction relief petition more than one year after his final conviction.

¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court’s interpretation and application of the law were correct. We affirm.

/S/ BETH BAKER

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ DIRK M. SANDEFUR

/S/ JIM RICE