DA 18-0522

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 281N

JEFFERY J. LOUT,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause Nos. DC 99-22 and DC 02-79
Honorable Jeffrey H. Langton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jeffery J. Lout, Self-represented, Deer Lodge, Montana

For Appellee:

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

William Fulbright, Ravalli County Attorney, Hamilton, Montana

Submitted on Briefs: November 6, 2019

Decided: December 3, 2019

Filed:

Clerk

Justice Ingrid Gustafson 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 Petitioner and Appellant Jeffery J. Lout (Lout) appeals the orders denying his motions to dismiss issued by the Twenty-First Judicial District Court, Ravalli County, on July 19, 2018. We affirm because Lout's request for relief is both untimely and procedurally barred.

¶3 In DC 99-22, after pleading guilty to two counts of criminal sale of dangerous drugs, Lout was sentenced to a total prison term of 40 years, with 30 suspended. He did not appeal his conviction or sentence. In DC 02-79, after entering guilty pleas pursuant to a plea agreement, Lout was sentenced to two concurrent life prison terms for sexual offenses. Lout did not file a direct appeal in DC 02-79, but instead sought postconviction relief (PCR).[1] In April 2004, the District Court denied Lout PCR and this Court affirmed that denial in 2005. *See Lout v. State*, 2005 MT 93, 326 Mont. 485, 111 P.3d 199. In 2008, the District Court denied Lout's motion to withdraw his guilty pleas in DC 02-79. In 2018,

[1] Although titled as a writ of habeas corpus, this Court concluded his claims regarding ineffective assistance of counsel were more appropriately considered as claims for postconviction relief and forwarded Lout's petition to the District Court with instructions for the court to review "any claims cognizable as claims for postconviction relief." *Lout v. Mahoney*, No. 03-767, Or. (Mont. Dec. 9, 2003).

Lout filed a motion entitled "Motion to Dismiss and Exonerate For the Unlawful Conviction and Illegal Incarceration For States Failure to comply with Legislative Intent of the State Law Statutes" in both DC 99-22 and DC 02-79. As the allegations therein collaterally attacked his convictions and sentences, the District Court appropriately treated the motions as petitions for PCR. The District Court then denied the motions concluding they were procedurally barred. Lout appeals from these denials.

¶4 The State argues Lout's petitions, filed in 2018, are untimely. Section 46-21-102, MCA, addresses the timeliness of PCR petitions:

> (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;
>
> . . .
>
> (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.

An appeal must be taken within sixty days of entry of final judgment in a criminal case. M. R. App. P. 4(5)(b)(i). Because Lout did not appeal, his convictions became final when the time for appeal to this Court expired. Section 46-21-102(1)(a), MCA.

¶5 In DC 99-22, the District Court entered its written judgment on November 9, 1999—thus, Lout's time for filing a direct appeal expired on January 10, 2000. In DC 02-79, the District Court entered its written judgment on April 14, 2003—thus, Lout's time for filing a direct appeal expired on June 13, 2003. Pursuant to § 46-21-102(1), MCA,

Lout had until January 10, 2001, in DC 99-22 and until June 14, 2004, in DC 02-79 to file petitions for PCR. Lout did not file his PCR claims until June 2018. Therefore, Lout's PCR petitions are time-barred—by 17 years in DC 99-22 and by 14 years in DC 02-79.

¶6 Lout's 2018 claims attacking the validity of his convictions and sentences are not only time-barred but procedurally barred as well. Lout claims his prosecutions were invalid because the State charged him by information and the District Court was biased because he was charged by information. As thoroughly discussed by the District Court in its orders, Montana's Constitution and statutes permit prosecution by filing an information after leave of court has been granted. Mont. Const. art. II, § 20 and §§ 46-11-101 and -102, MCA. We agree with the District Court that Lout's argument is based on his misunderstanding of the governing law and a misinterpretation of the case law upon which he relies.

¶7 For the first time, Lout now asserts the District Court was biased because he was charged by information, he was excessively sentenced, and he was denied his due process rights to challenge his Level III sexual offender designation. To the extent these claims were record-based, Lout could have raised these claims on direct appeal. He did not. To the extent these claims were not record-based, Lout could have raised them in a timely petition for PCR. He did not. These claims were known, or reasonably should have been known, to Lout upon his sentencings. Further, these claims are not based on "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. Lout offers no evidence that he did not engage in the criminal conduct to which he pled guilty.

¶8 Under § 46-21-105(1)(b), MCA, "[t]he court shall 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." Lout pursued PCR in 2003, which was denied by the District Court. In April 2005, this Court affirmed that denial. In 2008, Lout sought to withdraw his guilty pleas. This was also denied at the district court level and Lout did not appeal the denial. Lout's current appeal does not raise any grounds for relief that could not have been raised in his original 2003 filing which collaterally attacked his convictions and sentences. Lout's 2018 motions are thus procedurally barred as a second or subsequent petition under § 46-21-105(1)(b), MCA.

¶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.

¶10 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ JIM RICE