DA 19-0604

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 5N

CITY OF GREAT FALLS,

Plaintiff and Appellee,

v.

JASON BRYAN MARTIN,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. DDC 19-0142
Honorable John W. Parker, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jason Bryan Martin, Self-represented, Great Falls, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Katie F. Schulz, Assistant Attorney General, Helena, Montana

Sara R. Sexe, Great Falls City Attorney, Joseph P. Cik, Assistant City Attorney, Great Falls, Montana

Submitted on Briefs: December 2, 2020

Decided: January 5, 2021

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 Defendant and Appellant Jason Bryan Martin (Martin) appeals from the October 7, 2019 Order Denying Appeal and Remanding issued by the Eighth Judicial District Court, Cascade County. We affirm.

¶3 On May 12, 2017, Martin, who was on probation due to a previous conviction for felony assault with a weapon, ran from Great Falls Police (GFPD) officers who were attempting to detain him. Later that day, Martin was found and arrested. He was charged with Obstructing a Peace Officer or Other Public Servant, a misdemeanor, in violation of § 45-7-302(1), MCA, in the Great Falls Municipal Court. The Municipal Court appointed the Office of State Public Defender to represent Martin, and on May 18, 2017, counsel for Martin filed a Notice of Appearance. The matter was originally set to go to trial on August 31, 2017. On June 2, 2017, however, Martin changed his plea to nolo contendere by filing a Waiver of Rights and Entry of Nolo Contendere Plea. The Municipal Court sentenced Martin to 180 days at the Cascade County Detention Center, with all but 21 days suspended, and gave Martin credit for 21 days served on the sentence. Martin did not appeal.

¶4 On August 27, 2018, Martin filed a Petition for a Writ of Error *Coram Nobis*[1] in the Municipal Court. In his petition, Martin claimed both ineffective assistance of counsel leading to an involuntary plea of nolo contendere and actual innocence of the charged conduct. On December 10, 2018, the City of Great Falls filed its Response to Defendant['s] Petition for a Writ of Error *Coram Nobis*, arguing the Municipal Court lacked jurisdiction to hear the matter pursuant to § 46-21-101(2), MCA, and further noting that the writ of *coram nobis* is not available under Montana law. The Municipal Court held a hearing on the petition on December 11, 2018. At the hearing, the Municipal Court orally ruled that *coram nobis* relief was not available in Montana, that it was considering the petition as one for postconviction relief, and that it lacked jurisdiction to consider the petition because the petition was untimely and Martin failed to exhaust his appellate remedies.

¶5 Martin appealed to the District Court on December 20, 2018. On February 11, 2019, the Municipal Court entered a written Order denying Martin's petition, once again noting the petition was untimely and that Martin failed to exhaust his appellate remedies. The Municipal Court further found that it lacked jurisdiction to consider the petition pursuant to § 46-21-101(2), MCA, and ordered Martin's petition "dismissed to be filed or reviewed in District Court." On March 1, 2019, the Municipal Court record was transferred to the District Court. After the parties briefed the matter, the District Court held a hearing on

[1] *Coram nobis* is a "writ of error directed to a court for review of its own judgment and predicated on alleged errors of fact." *Coram nobis*, *Black's Law Dictionary* (11th ed. 2019).

October 2, 2019.[2] The District Court issued its Order Denying Appeal and Remanding on October 7, 2019. The District Court's order again treated Martin's petition as one for postconviction relief and determined it was both untimely and procedurally barred for failing to exhaust appellate remedies.

¶6 Martin appeals. We restate the issues on appeal as follows: (1) whether the Municipal Court erred when it treated Martin's petition for a writ of *coram nobis* as a postconviction petition and determined it lacked jurisdiction to consider the petition; (2) whether the District Court erred when it treated Martin's appeal from the Municipal Court as a petition for postconviction relief and concluded Martin was not entitled to relief; and (3) whether plain error review should be applied to consider constitutional claims Martin raises for the first time on appeal.

¶7 Upon Martin's appeal from Municipal Court, the District Court functioned as an intermediate appellate court. *See* §§ 3-5-303 and 3-6-110, MCA. When a district court functions as an intermediate appellate court for an appeal from a lower court of record, we review the appeal de novo as though it were originally filed in this Court. *State v. Holland*, 2019 MT 128, ¶ 7, 396 Mont. 94, 443 P.3d 519 (citing *State v. Akers*, 2017 MT 311, ¶ 9, 389 Mont. 531, 408 P.3d 142). We examine the record independently of the district court's decision, reviewing the trial court's findings of fact for clear error, its discretionary rulings

[2] According to a minute entry in the record, after the parties presented their arguments, the District Court orally denied Martin's petition at this hearing and stated its findings of fact and conclusions of law for the record. No transcript of this hearing was provided.

for abuse of discretion, and its legal conclusions for correctness. *State v. Meyer*, 2017 MT 124, ¶ 11, 387 Mont. 422, 396 P.3d 1265 (citing *Stanley v. Lemire*, 2006 MT 304, ¶ 26, 334 Mont. 489, 148 P.3d 643).

¶8 In Montana, proceedings seeking postconviction relief are governed by statute and "a writ of *coram nobis* is no longer available as a remedy for post-conviction relief." *State v. Barrack*, 267 Mont. 154, 159, 882 P.2d 1028, 1031 (1994). Effective on October 1, 2011, the writ of *coram nobis* was abolished from Montana jurisprudence by M. R. Civ. P. 60(e). Martin filed his petition for a writ of *coram nobis* in the Municipal Court on August 27, 2018—well after *coram nobis* was abolished in Montana. Martin asserted *coram nobis* relief was still available to him due to the United States Supreme Court's decision in *United States v. Morgan*, 346 U.S. 502, 74 S. Ct. 247 (1954), but the Municipal Court correctly rejected this argument.

¶9 In *Morgan*, the Supreme Court held federal courts had the power to issue writs of *coram nobis* pursuant to federal law, unconstrained by the enactment of 28 U.S.C. § 2255, the federal habeas corpus statute. *Morgan*, 346 U.S. at 511, 74 S. Ct. at 252; *see also* 28 U.S.C. § 1651(a) ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."). The trial court in *Morgan* treated Morgan's application for *coram nobis* as an application for habeas corpus under 28 U.S.C. § 2255 and dismissed the matter because Morgan "was no longer in custody under its sentence" as required for a habeas petition under the federal statutes. *Morgan*, 346 U.S. at 504, 74 S. Ct.

at 249. In Montana, however, a person need only be convicted of an offense to file for postconviction relief. *Compare* § 46-21-101(1), MCA, *with* 28 U.S.C. § 2255(a). Indeed, collateral attack like that formerly available under *coram nobis* is specifically provided for in Montana's postconviction statute. Section 46-21-101(1), MCA.

¶10 With *coram nobis* relief unavailable under Montana law, the Municipal Court treated Martin's petition as one for postconviction relief pursuant to § 46-21-101, MCA. Though its oral ruling commented on the timeliness of the petition and Martin's failure to exhaust his appellate remedies, the Municipal Court's written Order determined the Municipal Court lacked jurisdiction over the petition pursuant to § 46-21-101(2), MCA. That statute states, "[i]f the sentence was imposed by a justice's, municipal, or city court, the petition may not be filed unless the petitioner has exhausted all appeal remedies provided by law. The petition **must be filed with the district court** in the county where the lower court is located." Section 46-21-101(2), MCA (emphasis added). Accordingly, the Municipal Court both correctly construed Martin's petition as one for postconviction relief and determined it lacked jurisdiction to hear the petition.

¶11 We review a district court's denial of a petition for postconviction relief to determine if the court's findings of fact are clearly erroneous and if its conclusions of law are correct. *Lacey v. State*, 2017 MT 18, ¶ 13, 386 Mont. 204, 389 P.3d 233 (citing *Kenfield v. State*, 2016 MT 197, ¶ 7, 384 Mont. 322, 377 P.3d 1207).

¶12 As noted above, the Municipal Court found it lacked jurisdiction to consider Martin's petition as it should have been filed in the District Court. On appeal, the District

Court similarly construed Martin's petition as one for postconviction relief and found that it was both untimely and procedurally barred. A petition for postconviction relief from a municipal court sentence "may not be filed unless the petitioner has exhausted all appeal remedies provided by law." Section 46-21-101(2), MCA. In addition, the petition must be filed "within 1 year of the date that the conviction becomes final." Section 46-21-102(1), MCA. An exception to the one-year time bar exists for claims that allege "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.

¶13 Martin was convicted and sentenced on June 2, 2017. An appeal to a district court from a municipal court criminal case must be taken within ten days. U.M.C.R.App. 5(b)(3); *see also* § 46-17-311(2), MCA. Because Martin did not appeal to the District Court, his conviction became final on June 16, 2017. *See* U.M.C.R.App. 20(a). Martin did not file his Petition for a Writ of Error *Coram Nobis* in the Municipal Court until August 27, 2018, well beyond the one-year time bar provided by § 46-21-102(1), MCA.

¶14 Martin's petition also fails to allege the existence of newly discovered evidence which would establish he did not commit the offense of obstructing a peace officer. In this case, Martin's probation officer orally directed GFPD officers to arrest Martin for probation violations pursuant to her deputization authority provided by § 46-23-1012(2), MCA. GFPD officers then sought to arrest Martin, who fled. Though Martin weaves a tale of a government conspiracy against him and argues he was therefore free to run from

the police, such an argument is not supported by the evidence and is not well-taken. Martin's probation officer deputized GFPD officers to arrest Martin, and Martin committed the offense of obstructing a peace officer by fleeing from that arrest. As Martin's petition was not filed within one year of the date his conviction became final and did not allege the existence of newly discovered evidence which would show he did not commit the offense of obstructing a peace officer, the District Court correctly denied Martin's petition as untimely.

¶15 The District Court, in addition to finding the petition untimely, also found Martin's petition was procedurally barred because he failed to exhaust his appeal remedies as required by § 46-21-101(2), MCA. Martin did not appeal his conviction after his plea of nolo contendere as his right to trial de novo in the District Court was waived pursuant to § 46-17-203(2)(a), MCA. Martin, though he would later claim in his petition that his plea was not entered voluntarily, did not move to withdraw his guilty plea. *See* § 46-17-203(2)(b), MCA; § 46-16-105(2), MCA. The District Court correctly found that Martin failed to exhaust his appeal remedies and therefore his petition, in addition to being time-barred, was also procedurally barred by § 46-21-101(2), MCA.

¶16 Finally, Martin urges us to employ plain error review on constitutional claims he raises for the first time on appeal. Specifically, Martin asserts § 46-21-101(2), MCA, is unconstitutional as applied to him and that his due process rights were violated. We generally do not address issues raised for the first time on appeal. *State v. George*, 2020 MT 56, ¶ 4, 399 Mont. 173, 459 P.3d 854 (citing *State v. Hatfield*, 2018 MT 229, ¶ 15, 392

Mont. 509, 426 P.3d 569). "We may use the plain error doctrine in situations implicating a defendant's fundamental constitutional rights and where failing to review the alleged error may result in a manifest miscarriage of justice, leave unsettled the question of the fundamental fairness of the proceedings, or compromise the integrity of the judicial process." *Hatfield*, ¶ 15 (citing *State v. Lawrence*, 2016 MT 346, ¶ 9, 386 Mont. 86, 385 P.3d 968). We employ the plain error doctrine sparingly, on a case-by-case basis, and consider the totality of the circumstances of each case. *Akers*, ¶ 13 (citation omitted).

¶17 As the party requesting plain error review, Martin "bears the burden of firmly convincing this Court that the claimed error implicates a fundamental right and that such review is necessary to prevent a manifest miscarriage of justice or that failure to review the claim may leave unsettled the question of fundamental fairness of the proceedings or may compromise the integrity of the judicial process." *George*, ¶ 5 (citing *Akers*, ¶ 13).

¶18 Here, plain error review of Martin's newly-raised issues is not warranted as he had full opportunity to raise these claims below. Both the Municipal Court and the District Court heard Martin's case even though it was both wrongfully filed in the Municipal Court initially and not in the proper format of a petition for postconviction relief. Indeed, the Municipal Court, upon realizing Martin had filed in the wrong court dismissed the case so that Martin could file a petition for postconviction relief in the District Court. Martin declined to do so and instead appealed the denial of his *coram nobis* petition. The District Court then heard Martin's appeal and ultimately properly treated it as a petition for postconviction relief as well. Plain error review is not necessary to prevent a miscarriage

of justice, address a question of fundamental fairness, or preserve the integrity of the judicial process in this matter and we therefore decline to use our discretionary power to exercise plain error review.

¶19 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.

¶20 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ LAURIE McKINNON