

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0426

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JESUS VILLANUEVA,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana Thirteenth Judicial District Court,  
Yellowstone County, The Honorable Donald L. Harris, Presiding

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## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE ISSUE.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS .....	2
I. The offense .....	2
II. Procedural history .....	3
SUMMARY OF THE ARGUMENT .....	4
ARGUMENT .....	4
I. Standard of review and applicable law.....	4
A. Standard of review.....	4
B. Pleading requirements for PCR petitions.....	5
II. The district court correctly denied Villanueva’s PCR petition as untimely filed.....	6
CONCLUSION .....	10
CERTIFICATE OF COMPLIANCE.....	11

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Davis v. State</i> , 2008 MT 226, 334 Mont. 300, 187 P.3d 654 .....	6, 7
<i>DeShields v. State</i> , 2006 MT 58, 331 Mont. 329, 132 P.3d 540 .....	5
<i>Ellenburg v. Chase</i> , 2004 MT 66, 320 Mont. 315, 87 P.3d 473 .....	5
<i>Garrett v. State</i> , 2005 MT 197, 328 Mont. 165, 119 P.3d 55 .....	4
<i>Hamilton v. State</i> , 2010 MT 25, 355 Mont. 133, 226 P.3d 588 .....	5, 6
<i>Hardin v. State</i> , 2006 MT 272, 334 Mont. 204, 146 P.3d 746 .....	8, 9
<i>Herman v. State</i> , 2006 MT 7, 330 Mont. 267, 127 P.3d 422 .....	4
<i>Holland v. Florida</i> , 560 U.S. 631 (2010) .....	10
<i>Raugust v. State</i> , 2003 MT 367, 319 Mont. 97, 82 P.3d 890 .....	4, 6, 8
<i>Schlup v. Delo</i> , 513 U.S. 298 (1995) .....	7
<i>State v. Beach</i> , 2013 MT 130, 370 Mont. 163, 302 P.3d 47 .....	8
<i>State v. Cobell</i> , 2004 MT 46, 320 Mont. 122, 86 P.3d 20 .....	4
<i>State v. Pope</i> , 2003 MT 330, 318 Mont. 383, 80 P.3d 1232 .....	7-8
<i>State v. Redcrow</i> , 1999 MT 95, 294 Mont. 252, 980 P.2d 622 .....	7, 8, 9

<i>State v. Root</i> , 2003 MT 28, 314 Mont. 186, 64 P.3d 1035 .....	8
<i>State v. Villanueva</i> , 2021 MT 277, 406 Mont. 149, 497 P.3d 586 .....	1, 2, 6, 8
<i>Yow Ming Yeh v. Martel</i> , 751 F.3d 1075 (9th Cir. 2014) .....	10

## Other Authorities

### Montana Code Annotated

§ 46-21-102 .....	6
§ 46-21-102(1) .....	6
§ 46-21-102(1)(b) .....	6
§ 46-21-104(1)(c) .....	5
§ 46-21-104(2) .....	5
§ 46-21-105(2) .....	5, 8, 9
§ 46-21-201(1)(a) .....	5, 6

### United States Code

Tit. 28, § 2254 .....	7, 10
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### United States Supreme Court Rules

Rule 13(1) .....	6
Rule 13(3) .....	6

## **STATEMENT OF THE ISSUE**

Whether the district court correctly denied the Appellant's petition for postconviction relief as untimely because it was filed more than one year after his conviction became final.

## **STATEMENT OF THE CASE**

On April 26, 2019, a jury convicted the Appellant, Jesus Villanueva, of two counts of felony sexual assault against his two minor stepdaughters. (Yellowstone County Cause No. DC 17-740 Documents (Trial Docs.) 97-99, 116, 119-20; Yellowstone County Cause No. DV 23-150 Document (PCR Doc.) 8.) On September 6, 2019, the district court sentenced Villanueva to 40 years in the Montana State Prison for each conviction to run concurrently. (Trial Doc. 134.)

Villanueva appealed, and this Court issued its opinion affirming Villanueva's convictions on *October 26, 2021. State v. Villanueva*, 2021 MT 277, 406 Mont. 149, 497 P.3d 586. On February 6, 2023, Villanueva filed a petition for postconviction relief (PCR petition). (PCR Doc. 1.) The district court denied Villanueva's petition as untimely because he filed it more than one year after his conviction became final. (PCR Docs. 7-8.)

## STATEMENT OF THE FACTS

### **I. The offense**

Beginning in 2015, Villanueva lived in Billings with his wife and her four children, including his twin stepdaughters A.L. and C.L. *Villanueva*, ¶ 3. In January 2017, while Villanueva was in jail on unrelated charges, the twin stepdaughters, who were seven years old at the time, informed their mother that Villanueva had sexually assaulted them in the past. *Id.* ¶ 4. Both girls reiterated these allegations during forensic interviews. *Id.* ¶ 5.

On July 5, 2017, the State charged Villanueva with two counts of felony sexual assault of both of Villanueva's stepdaughters and one count of sexual intercourse without consent of one of them. *Id.* ¶¶ 5, 21. Both girls testified during trial. *Id.* ¶¶ 16-17.

C.L. testified that, on multiple occasions, Villanueva would touch her, both outside and inside her clothes, on "[her] personal parts" that she ordinarily "covers with a . . . swimsuit." C.L.'s testimony was detailed and noted that these alleged instances of sexual abuse "usually [occurred] in the morning" at their home while C.L. was still wearing a nightgown or pajamas. C.L. also testified that, on at least one occasion, she was forced to touch Villanueva's penis with her hand.

*Id.* ¶ 16.

During A.L.'s testimony, she stated that, on "more than on[e]" occasion at their home, Villanueva had reached underneath her pajamas and touched her vagina with his hand. A.L. also testified that,

on a separate occasion, while she was in the car with Villanueva, Villanueva had put his penis in her mouth, which “made [her] upset.”

*Id.* ¶ 17.

## **II. Procedural history**

The jury convicted Villanueva of both counts of felony sexual assault but acquitted him of the sexual intercourse without consent charge. *Id.* ¶ 21.

Villanueva appealed, and this Court affirmed his convictions on October 26, 2021.

*Id.* ¶¶ 42-44.

On February 6, 2023, Villanueva filed a pro se PCR petition. (PCR Doc. 1.) On June 21, 2023, the district court denied Villanueva’s petition as untimely. (PCR Doc. 7.) On July 25, 2023, the district court issued an amended order restating its denial. (PCR Doc. 8.) The district court explained:

Here, Villanueva had 90 days from October 26, 2021, to file an appeal to the United States Supreme Court. That time expired on January 24, 2022. Villanueva then had until January 24, 2023, to file a petition for post-conviction relief. Villanueva filed this petition on February 6, 2023, thirteen days after the allowable time. Because Villanueva’s petition was filed after January 24, 2023, the Court finds the petition untimely.

(*Id.* at 2.)

On October 2, 2023, Villanueva filed a motion for out-of-time appeal with this Court, which it granted. (PCR Docs. 9, 12.)

## **SUMMARY OF THE ARGUMENT**

The district court correctly denied Villanueva's PCR petition because he filed it more than one year after his conviction became final. Villanueva has failed to provide any evidence to show he is entitled to toll the statute of limitations on equitable grounds.

This Court should affirm the district court's denial of Villanueva's untimely PCR petition.

## **ARGUMENT**

### **I. Standard of review and applicable law**

#### **A. Standard of review**

"This Court reviews a district court's denial of a petition for postconviction relief to determine whether the district court's findings of fact are clearly erroneous and whether its conclusions of law are correct." *Raugust v. State*, 2003 MT 367, ¶ 9, 319 Mont. 97, 82 P.3d 890. The petitioner has the burden of proving by a preponderance of the evidence that he or she is entitled to relief. *Herman v. State*, 2006 MT 7, ¶ 44, 330 Mont. 267, 127 P.3d 422. A petitioner seeking to reverse a district court's denial of a postconviction relief petition "bears a heavy burden." *Garrett v. State*, 2005 MT 197, ¶ 10, 328 Mont. 165, 119 P.3d 55 (quoting *State v. Cobell*, 2004 MT 46, ¶ 14, 320 Mont. 122, 86 P.3d 20).

## **B. Pleading requirements for PCR petitions**

The postconviction statutes are demanding in their pleading requirements. *Ellenburg v. Chase*, 2004 MT 66, ¶ 12, 320 Mont. 315, 87 P.3d 473. 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.” Mont. Code Ann. § 46-21-104(1)(c). The petition must also “be accompanied by a supporting memorandum, including appropriate arguments and citations and discussion of authorities.” Mont. Code Ann. § 46-21-104(2). The postconviction process is not a substitute for direct appeal, so a petitioner cannot raise claims that reasonably could have been raised on direct appeal. Mont. Code Ann. § 46-21-105(2); *DeShields v. State*, 2006 MT 58, ¶ 15, 331 Mont. 329, 132 P.3d 540.

A district court may dismiss a petition for postconviction relief without holding an evidentiary hearing if the petition fails to satisfy the procedural threshold set forth in Mont. Code Ann. § 46-21-104(1)(c). *Hamilton v. State*, 2010 MT 25, ¶ 10, 355 Mont. 133, 226 P.3d 588. Additionally, a district court may dismiss a petition for postconviction relief without ordering a response if the petition, files, and records “conclusively show that the petitioner is not entitled to relief.” Mont. Code Ann. § 46-21-201(1)(a). Alternatively, the court may order a response and, after reviewing the response, “dismiss the petition as a matter of law

for failure to state a claim for relief or may proceed to determine the issue.”

Mont. Code Ann. § 46-21-201(1)(a); *Hamilton*, ¶ 12.

## **II. The district court correctly denied Villanueva’s PCR petition as untimely filed.**

A person seeking postconviction relief must file a petition within one year of the date that the conviction becomes final. Mont. Code Ann. § 46-21-102(1). If a petitioner appeals to the Montana Supreme Court but does not petition the United States Supreme Court for a writ of certiorari, the conviction becomes final when the time for petitioning the United States Supreme Court for review expires. Mont. Code Ann. § 46-21-102(1)(b). An appeal to the United States Supreme Court must be taken within 90 days after the entry of this Court’s opinion. U.S. Sup. Ct. R. 13(1), (3); *Raugust*, ¶ 15. The time-bar established in Mont. Code Ann. § 46-21-102 “constitutes a rigid, categorical time prescription that governs post-conviction petitions.” *Davis v. State*, 2008 MT 226, ¶ 23, 334 Mont. 300, 187 P.3d 654.

The district court correctly found Villanueva filed his PCR petition after the one-year filing deadline expired. Villanueva appealed his conviction to this Court in DA 19-0675. (Trial Doc. 138.) On October 26, 2021, this Court affirmed Villanueva’s two felony sexual assault convictions. *Villanueva*, ¶¶ 42-44. Villanueva did not petition for a writ of certiorari, so his conviction became final 90 days later, on January 24, 2022. *See* U.S. Sup. Ct. R. 13(1), (3); *Raugust*, ¶ 15.

Villanueva had to file his PCR petition within one year of that date, so his filing deadline expired on January 24, 2023. *Id.* The district court correctly denied Villanueva’s PCR petition as untimely because Villanueva did not file it until February 6, 2023.

This Court should not reverse the district court’s correct decision based on Villanueva’s request for “equitable tolling.” (Appellant’s Brief at 1-2.) The federal authority Villanueva provides applies to 28 U.S.C. § 2254 proceedings, not state postconviction proceedings. To the extent Montana law allows equitable tolling, this Court considers “whether the failure to toll on equitable grounds would work a clear miscarriage of justice, one so obvious that the imposition of the time bar would compromise the integrity of the judicial process.” *Davis*, ¶ 25 (quoting *State v. Redcrow*, 1999 MT 95, ¶ 34, 294 Mont. 252, 980 P.2d 622) (internal quotations omitted).

The “clear miscarriage of justice” exception this Court referenced in *Davis*, ¶ 25, originated in *Redcrow*, ¶¶ 30-37, where this Court adopted the fundamental miscarriage of justice exception in *Schlup v. Delo*, 513 U.S. 298 (1995). This Court has explained that a clear miscarriage of justice must be “so obvious that the judgment is rendered a complete nullity,” and it “arises only when a jury could find, in light of new evidence, that the defendant is actually innocent of the crime.” *Redcrow*, ¶¶ 34, 37; *see also State v. Pope*, 2003 MT 330, ¶¶ 44-53, 318 Mont.

383, 80 P.3d 1232 (confirming these considerations and reiterating the high showing necessary for this equitable relief); *State v. Root*, 2003 MT 28, ¶ 18, 314 Mont. 186, 64 P.3d 1035 (explaining “‘miscarriage of justice’ exception premised upon conviction of one who is actually innocent”); *Raugust*, ¶ 20 (“The miscarriage of justice exception must be ‘a constitutional violation [that] has probably resulted in the conviction of one who is actually innocent.’”); *State v. Beach*, 2013 MT 130, ¶¶ 11-16, 95-97, 370 Mont. 163, 302 P.3d 47 (explaining the actual innocence exceptions to the statutory time bar) (Justice Rice, for the majority, and Justice McKinnon, concurring).

Villanueva is not entitled to this equitable remedy. *See Redcrow*, ¶¶ 30-37. Villanueva does not provide anything to show he was actually innocent of sexually assaulting his seven-year-old stepdaughters. In his PCR petition, Villanueva referenced his “innocence” only in the context of the handwritten notes of the Child Protection Specialist who had long been assigned to his family’s case. However, this restates Villanueva’s argument on direct appeal that this Court rejected—the “handwritten notes do not constitute evidence ‘material’ to proving Villanueva’s guilt or innocence.” *Villanueva*, ¶ 32. A claim raised on direct appeal cannot be relitigated during postconviction proceedings, *see Hardin v. State*, 2006 MT 272, ¶ 16, 334 Mont. 204, 146 P.3d 746 (citing Mont. Code Ann. § 46-21-105(2)), and this Court’s rejection of Villanueva’s only asserted basis of innocence illustrates his

failure to show the dismissal of his petition as untimely would cause a clear miscarriage of justice. *See Redcrow*, ¶¶ 30-37.

Both of Villanueva's claims in his PCR petition are largely based on the handwritten notes, and he provides no evidence of innocence. Villanueva's speedy trial claim is procedurally barred because he could have raised it on direct appeal. *See* Mont. Code Ann. § 46-21-105(2); *Hardin*, ¶ 16. Villanueva provides nothing in support of his IAC claim that shows he is innocent or could even lead to evidence to show it. His allegations of deficiency are largely based on his opinion that his attorneys did not sufficiently impeach the witnesses. But he provides nothing other than his self-serving denials to support his allegations that any witness was lying. Moreover, Villanueva fails to address the substance of the victims' allegations, who both testified about instances of Villanueva's sexual abuse.<sup>1</sup>

Villanueva provides prison communication documents that show he repeatedly requested assistance due to his asserted disabilities. But they also show Villanueva periodically had assistance, which he could have used to timely pursue postconviction relief, and he submitted the first prison document, which is dated

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<sup>1</sup> Villanueva also misquotes his counsel's closing argument in an attempt to make her look incompetent. (PCR Doc. 2 at 9 (Affidavit in Support of PCR petition).) Villanueva's counsel quoted the testimony of Villanueva's wife who said, "That was dumb of me." (4/25/19 Trial Tr. at 583.) The attorney was not referring to herself as Villanueva argues. (*Id.*)

June 16, 2022, almost 8 months after this Court affirmed his conviction. (PCR Doc. 1 at Exs. A(1)-A(5).) Even if the equitable tolling doctrine for 28 U.S.C. § 2254 proceedings applied, which it does not, it requires a petitioner to diligently pursue a timely filing and that some “extraordinary circumstance” must prevent timely filing. *Holland v. Florida*, 560 U.S. 631, 649 (2010). Villanueva cannot meet the “very high bar” set by either of these elements. *See Yow Ming Yeh v. Martel*, 751 F.3d 1075, 1077 (9th Cir. 2014). Had Villanueva diligently pursued his PCR petition during the 15 months after this Court affirmed his convictions, he could have timely filed his PCR petition.

### **CONCLUSION**

The State respectfully requests this Court affirm the district court’s denial of Villanueva’s untimely petition for postconviction relief.

Respectfully submitted this 8th day of March, 2024.

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## **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 2,172 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Brad Fjeldheim

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## **CERTIFICATE OF SERVICE**

I, Brad Fjeldheim, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 03-08-2024:

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