IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0628

WES ADAMS,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

BRIEF OF APPELLEE

On Appeal from the Montana Twentieth Judicial District Court,
Lake County, The Honorable D. Kim Christopher, Presiding

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STATEMENT OF THE ISSUES

1. Whether Mont. Code Ann. § 46-21-101(1) was violated and Appellant suffered prejudice after the original judge who handled Appellant's criminal case was deceased, thus unavailable to consider Appellant's postconviction relief (PCR) petition, and a different judge considered the petition.

2. Whether the district court's conclusion that Appellant's first PCR petition was untimely and was thus "moot" is dispositive here, when the district court additionally rejected the petition on the merits.[1]

3. Whether the district court correctly denied and dismissed Appellant's *Brady v. Maryland*, 373 U.S. 83 (1963) and *Strickland v. Washington*, 466 U.S. 668 (1984) claims, as well as his "newly discovered evidence" claim of innocence.

4. Whether the district court abused its discretion when it dismissed Appellant's PCR petitions without ordering a response or a hearing.[2]

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[1] Appellant's Issues #2 and #3 bear upon the same subject—the court's finding of a procedural bar—so the State combines them in its response.

[2] This claim is raised in Appellant's "Statement of the Issues," but Appellant does not thereafter mention it in his argument. Out of an abundance of caution, the State addresses the claim.

STATEMENT OF THE CASE

I. The criminal case

On September 6, 2006, the State charged Appellant Wes Adams with assault on a peace officer after Adams ran two vehicles off the right side of the road, crossed the centerline, and entered the opposite-bound lane, almost hitting Ronan Police Officer Chad Brown's patrol vehicle. (Doc. 4.) The State also filed a notice of intent to seek a persistent felony offender (PFO) status, referencing Adams's prior convictions of assault on a peace officer and tampering with witnesses. (Doc. 8.) Public defender Tim Goen was appointed.

Adams was released on his own recognizance with pretrial conditions. (Doc. 14.) On December 29, 2006, the State moved to revoke Adams's release for alcohol violations and noncompliance with alcohol testing. (Doc. 18.) The court granted the motion. (Doc. 19.)

Defense counsel Goen obtained multiple omnibus continuances, completing a defense interview with Officer Brown, and further explaining an intent to review "a tape of dispatch" from the September 6, 2006 incident. (*See* Doc. 12, min. ent.; Doc. 15, min. ent.)[3] Goen then began negotiating with the State on a potential plea

[3] The State relies on the limited information available from minute entries. Adams has not provided any transcripts from his criminal case. It is Adams's burden to provide a record sufficient to enable this Court to rule upon the issues raised, including obtaining transcripts necessary for the appellate record. M. R. App. P. 8(2)-(3).

agreement, and the State sent Adams a plea proposal on December 6, 2006. (Doc. 15, min. ent.; Doc. 17, min. ent.)

Meanwhile, after being released for a funeral, Adams was briefly in tribal custody, then absconded. (Docs. 21, 22.) Adams was arrested on April 13, 2007. (Doc. 24.)

On April 25, 2007, the parties appeared for the omnibus hearing. Goen asked for continuance for one week "as there are some matters the investigator is looking into[,]" which the court granted. (Doc. 26, min. ent.)

On May 2, 2007, Adams filed an acknowledgement of rights, affirming he had had "an opportunity to examine the charge brought against me, including the investigative file" and affirming he wished to plead guilty. (Doc. 28 at 1.) Adams waived all his trial rights, including his right to have the State prove its case beyond a reasonable doubt. (*Id*. at 3-4.) Adams agreed he had had "ample time and opportunity to discuss this case with my attorney, I have received the full benefit of my attorney's advice, and I am satisfied with the services of my attorney." (*Id*. at 4.) Adams affirmed he was entering into his plea agreement "freely and voluntarily and with full knowledge of its terms and conditions." (*Id*. at 5.) Goen affirmed and certified Adams's answers were completed in his presence and Adams acted "with full knowledge" of the proposed plea agreement. (*Id*. at 6.)

Adams simultaneously filed a Mont. Code Ann. § 46-12-211(1)(b) plea agreement. In the plea bargain, the State agreed to amend the assault on a peace officer charge to a charge of criminal endangerment. (Doc. 28 at 7.) In addition, the State agreed to not seek a PFO designation for Adams. (*Id*. at 8.) In return, Adams agreed to "stipulate that the facts contained in the Motion and Affidavit in Support of Motion for Leave to File an Information establish a factual basis to support the Defendant's plea of guilty." (*Id*.) The parties agreed to "jointly recommend" a 10-year sentence with all time suspended, save for 180 days to be served at the Lake County Jail. (*Id*.)

The same day, Adams appeared before the district court to change his plea. The minute entry specifies:

> Acknowledge[ment] of Rights and plea agreement order filed. Defendant sworn. Defendant is aware of his rights and the charge and possible punishment. Ready to enter plea, Defendant pleads GUILTY to the amended offense of CRIMINAL ENDANGERMENT. The plea is entered. PSI is ordered.

(Doc. 27, min. ent.)

The Presentence Investigation (PSI) was filed on June 12, 2007. The following was stated by the PSI author under the section "Victim Impact":

> The victim in this case is Chad Brown, formerly a Ronan City Police Officer. Mr. Brown is no longer employed by the Ronan City Police Department, and has moved to Texas to work for the Department of Corrections in Texas. It is noted in the plea agreement for this case that 'the State has discussed this plea proposal with Ronan Police Officer Chad Brown who agrees with the plea.'

(Doc. 30 at 7.) The minute entry for the sentencing hearing details, "PSI has been received and reviewed. No additions or corrections." (Doc. 31.)

The parties abided by their agreed-upon recommendations at sentencing. (*Id*.) On June 13, 2007, the court sentenced Adams in accordance with the plea agreement. (Doc. 32 at 2.) Judgment was entered on June 18, 2007. (*Id*. at 7.) Adams did not appeal.

Adams's suspended sentence was revoked in 2008, 2011, and 2017 based on violations related to new charges such as kidnapping, DUI, PFMA, and disorderly conduct, along with numerous alcohol use violations. (*See* Docs. 36-37, 66-67, 74-75.) In his final 2017 revocation disposition, after the State had proven alcohol use violations, the district court decided to sentence Adams to "time served," observing that "repeated attempts at programming and supervision are not likely to benefit the community, society, or defendant." (Doc. 108.)

II. The postconviction proceedings

A. First petition

Around a year after Adams was originally sentenced, on June 30, 2008, Adams filed a PCR petition. (Doc. 46.) Relevant here, Adams raised an ineffective assistance of counsel (IAC) claim based on his attorney's alleged failure to "get a witness statement from my witness to support my case on my

behalf." (*Id*. at 4.) Adams also alleged that the "prosecutor withheld exculpatory evidence[,]" alleging that:

> Chad Brown, the police officer who made the charges against me was fired as a police officer for stealing evidence or tampering w/evidence from the Ronan police station. I believe this damages his credibility to testify against me.

(*Id*.) Adams also filed an affidavit from himself, constituting an almost verbatim recitation of his allegations in his petition. (Doc. 48.)

The State responded. Addressing Adams's IAC claim, the State explained that Adams "fail[ed] to give any indication whatsoever of what the witness would have said or how it would have helped his case." (Doc. 49 at 4.) The State also noted that Adams affirmed he was satisfied with Goen's representation in his plea agreement acknowledgement. (*Id*.) Addressing Adams's *Brady* claim, the State explained the background of Officer Brown's conviction:

> On June 8, 2006, the arresting officer, Chad Brown, was charged with misdemeanor theft for purchasing a generator in October, 2005, that he knew, or should have known, was stolen. The case was prosecuted by the Attorney General's Office. On January 22, 2007, Officer Brown pled guilty pursuant to a plea agreement and received a deferred sentence.

(*Id*. at 6.) The State further explained that the complaint, the judgment, and other court documents pertaining to Officer Brown were of public record, thus "[p]etitioner could have easily obtained the information regarding Officer Brown's case through reasonable diligence." (*Id*.) The State further argued that there was

no "reasonable probability" of a different outcome, explaining that the "fact that Officer Brown purchased a stolen generator has absolutely no bearing on the Petitioner running Officer Brown off the road approximately ten months later." (*Id*. at 6.) The State explained how Adams received the benefit of a plea agreement and how Adams's likelihood of success at trial were remote. (*Id*. at 6-7.)

As Adams explains, he "incorrectly filed" the PCR petition in his criminal docket. (DV-22-204 Doc. 1 at 6-7.) The district court never addressed or ruled upon the petition.

B. Second petition

On November 17, 2022, Adams filed a second PCR petition through new counsel, reraising the same IAC and *Brady* claims. (DV-22-204 Doc. 1.) Adams also claimed he had "newly discovered evidence" that he found on "November 18, 2021" relating to the POST (Peace Officer Standards and Training) records, showing that Brown "resigned from the Ronan Police Department on October 18, 2006[.]" (*Id*. at 3.)

Again, Adams attached an affidavit from himself, explaining his views on Goen's representation. (Doc. 1, Ex. 2.) Adams explained that, prior to his guilty plea, a district court clerk had told him in confidence that Brown was no longer a police officer and had moved to Texas after having been "convicted of a felony[.]" (*Id*. at 2.) He further alleged that he had told Goen about Officer Brown's conduct.

Finally, Adams explained that he only thereafter decided to go through with the plea deal because Goen had said he got him a "great deal" but he later found out "this wasn't much of a plea because I received the max sentence." (*Id*.)

C. Disposition

First, the Court held that Adams's original petition filed on June 30, 2008, was procedurally barred as untimely because it was filed more than a year after his criminal judgment was entered. Thus, the court explained, while the "register of actions does not reflect a ruling by [the prior judge] . . . given the Petition was untimely, it is moot." (Doc. 2 at 1.)

Second, the Court held that Adams's PCR petition failed on the merits. Harkening back to the State's 2008 response to Adams's petition, whereupon the State addressed the merits of Adams's *Brady* and *Strickland* claims, the court "adopted" and "incorporated herein by reference[]" the "authority and rationale in the State's response[.]" (*Id*. at 2.) The Court explained that "[t]here is no newly discovered information that was not a matter of public record and published." (*Id*.) Accordingly, the court denied and dismissed Adams's 2008 and 2022 petitions.

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STATEMENT OF THE FACTS

I. The offense

On August 28, 2006, Ronan Police Officer Chad Brown was driving his marked patrol vehicle, traveling east on Terrace Lake Road, when he observed a gold car traveling erratically. (Doc. 2 at 2.)[4] He saw the gold car attempt to initiate a westbound pass of two other vehicles and observed that it was weaving all over the road, ultimately forcing the other two westbound vehicles off the road. (*Id*.) The gold car proceeded westbound but weaved into the eastbound lane—heading for a direct head-on collision with Officer Brown's patrol vehicle. (*Id*.) Officer Brown took evasive action, steering his patrol vehicle off the road. (*Id*.)

Officer Brown then pursued the gold vehicle, pacing the vehicle in excess of speeds of 93 miles per hour. (Doc. 2 at 3.) The gold car "finally stopped" and Officer Brown identified the driver as Adams and apprehended him. (*Id*.)

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[4] Because Adams pleaded guilty, the following facts come from the Motion and Affidavit for Leave to File an Information.

II. Adams's guilty plea and further admissions

Adams pleaded guilty to criminal endangerment, agreeing that he committed the offense and stipulating in the plea agreement to the facts as described in the affidavit. (Doc. 28 at 8; *see also* Doc. 27, min. ent.)[5]

Adams admitted in the PSI that he "passed 2 cars that were slowing me down" and did not see "Ronan City Cop, (Chad Brown)" coming toward him in the opposite-bound lane. (Doc. 30 at 6.) Adams explained that he "swirved [sic] to avoid an accident." (*Id*.) Adams explained that, after he was pulled over, he "made the mistake of running." (*Id*.) Adams continued:

> I admit to what I did wrong. I'm sorry to the officer & to the court & to the public for my careless driving. I won't ever drive like that again!

(*Id*.) In his chemical dependency evaluation, the author explained Adams's account:

> [Adams] related in August 2006 he was driving, passed on a double line, ran a Ronan City Officer off of the road and subsequently was stopped. [Adams] said he had been drinking the night before and had two shots of whisky that morning before he decided to drive to Pablo to appear in court. He disclosed the night before he got stopped he had drank beer from nine at night until the next morning. He admitted he was very intoxicated and did experience a blackout.

(Doc. 36, 10/1/07 Interview re County Chemical Dependency Program at 1.)

[5] Presumably, Adams additionally provided a factual basis for his guilty plea at his change of plea hearing—but Adams has not provided any transcripts.

APPLICABLE LAW

I. Law applicable to IAC claims

This Court reviews IAC claims by applying the two-prong test set forth by the United States Supreme Court in *Strickland*. A PCR petitioner has the burden to demonstrate by a preponderance of the evidence that: (1) counsel's performance was deficient; and (2) the deficient performance prejudiced the defense. *Baca v. State*, 2008 MT 371, ¶ 16, 346 Mont. 474, 197 P.3d 948; *Ellenburg v. Chase*, 2004 MT 66, ¶ 12, 320 Mont. 315, 87 P.3d 473. A party alleging ineffective assistance on postconviction review must come forward with specific factual allegations that establish by a preponderance of the evidence that the party is entitled to relief. *Herman v. State*, 2006 MT 7, ¶ 44, 330 Mont. 267, 127 P.3d 422. A postconviction petitioner bears a heavy burden in seeking to overturn a district court's denial of PCR relief based on IAC claims. *Baca*, ¶ 16.

Trial counsel's performance is deficient if it falls "below an objective standard of reasonableness measured under prevailing professional norms and in light of the surrounding circumstances." *Whitlow v. State*, 2008 MT 140, ¶ 20, 343 Mont. 90, 183 P.3d 861. There is a strong presumption that counsel's actions were within the broad range of reasonable professional assistance. *Baca*, ¶ 17.

To establish that a defendant was prejudiced by counsel's deficient performance, the defendant must demonstrate a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Id.* "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The likelihood of a different result must be "substantial." *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

II. Law applicable to Brady claims

To establish a *Brady* violation, the defendant must show: (1) the State possessed evidence, including impeachment evidence, favorable to the defense; (2) the prosecution suppressed the favorable evidence; and (3) had the evidence been disclosed, a reasonable probability exits that the outcome of the proceedings would have been different. *Garding v. State*, 2020 MT 163, ¶ 26, 400 Mont. 296, 466 P.3d 501.

Impeachment evidence is evidence that bears on the "reliability of a given witness" as "determinative of guilt or innocence[.]" *Giglio v. United States*, 405 U.S. 150, 154 (1972). Exculpatory evidence is "[E]vidence which tends to clear the accused of guilt and vitiate the conviction." *State v. Hatfield*, 269 Mont. 307, 311, 888 P.2d 899, 902 (1995).

"[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985). "A 'reasonable probability' of a different result is . . . shown when the government's evidentiary suppression 'undermines confidence in the outcome of the trial.'" *State v. Ilk*, 2018 MT 186, ¶ 37, 392 Mont. 201, 422 P.3d 1219 (*citing Kyles v. Whitley*, 514 U.S. 419, 434 (1995)). Put another way, the question is whether "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Ilk*, ¶ 37 (*citing Kyles*, 514 U.S. at 435).

The party seeking to establish a *Brady* violation bears the burden of establishing such a violation. *State v. Crawford*, 2016 MT 96, ¶ 32, 383 Mont. 229, 371 P.3d 381. The defense must make a showing of more than "mere speculation about materials in the government's files." *Ilk*, ¶ 31 (*citing United States v. Mincoff*, 574 F.3d 1186, 1200 (9th Cir. 2009)).

III. Pleading requirements for PCR petitions

The postconviction statutes are demanding in their pleading requirements. *Ellenburg*, ¶ 12. A PCR petition 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).

A district court may dismiss a PCR petition 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 PCR petition 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); *Hamilton*, ¶ 11. This Court affirms a district court's order denying a PCR petition without holding an evidentiary hearing when the petitioner either failed to state a claim upon which relief could be granted or failed to provide the required evidentiary support for the claim. *Hamilton*, ¶¶ 10-32; *Herman,* ¶¶ 24-52.

SUMMARY OF THE ARGUMENT

The purposes of Mont. Code Ann. § 46-21-101(1) were not violated when a different district court judge considered Adams's PCR petition after the original district court judge who handled Adams's prior criminal case had passed away, thus was unavailable to consider Adams's PCR petition. The statute only serves to

ensure that, if available, the original district court judge who has background knowledge of the underlying criminal proceeding also considers the PCR petition. This Court has reasoned that if the original judge is not available, any other judge would be on equal footing as far as understanding the prior criminal record. Accordingly, no error occurred when a different district court judge considered Adams's PCR petition, thus Adams did not suffer prejudice.

While the State concedes that the district court incorrectly found Adams's first PCR petition was untimely, the district court also denied the petition on the merits, thus Adams's argument is not dispositive.

The district court correctly denied Adams's *Strickland* claim alleging that Goen was ineffective for failing to investigate Officer Brown's prior criminal charge and resignation. Goen engaged in reasonable professional assistance. Goen secured an investigator, interviewed Officer Brown, and reviewed the dispatch tapes. Through a favorably negotiated plea deal with the State, Goen saved Adams from a PFO sentence, reduced Adams's charge to criminal endangerment, and secured an almost fully suspended sentence for Adams. Adams's self-serving affidavit—particularly in absence of any affidavit from Goen explaining his representation—does not show that Goen's representation was outside the range of competent professional assistance. Nor does Adams's claim show a reasonable probability that Adams would have rejected the plea agreement

and gone to trial if he had possessed the information related to Officer Brown—particularly considering that Adams admits in his affidavit he already knew about Officer Brown's prior conduct and still decided to plead guilty.

Similarly, the district court correctly denied Adams's *Brady* claim. Adams does not raise an argument that Officer Brown's prior unrelated conduct is exculpatory or impeaching for his conviction of criminal endangerment, which he stipulated to committing as described in the State's Affidavit. And Adams merely speculates about what was in the prosecution's files. Regardless, as Adams admits, he was aware before his plea of Officer Brown's prior unrelated conduct and still decided to plead guilty. Adams cannot ignore information that he was otherwise aware of and later claim a *Brady* violation. Finally, Adams fails to meet his burden to show that any information pertaining to Officer Brown was material. He only claims that he was originally charged with assault on a peace officer and Officer Brown was not a peace officer at the time of his plea. This argument is not dispositive to his criminal endangerment conviction and does not raise a reasonable probability that had the evidence been disclosed, the result of the proceeding would have been different.

Finally, this Court need not reach Adams's final issue because Adams fails to properly raise it on appeal with any argument, but rather only mentions it in his

"Statement of the Issues." Even if this Court considers the claim, the district court properly exercised its discretion in declining to order a response from the State or hold an evidentiary hearing. Adams has only ever supported his claims through repetitive allegations in self-serving affidavits. His failure to legally develop his claims, along with his failure to provide factual evidentiary support for his claims, justified the district court's denial and dismissal of his claims.

STANDARD OF REVIEW

This Court reviews a district court's denial of a PCR petition 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. Mixed questions of law and fact presented by IAC claims are reviewed de novo. *Id.*

Discretionary rulings made by the district court in a postconviction relief proceeding, including rulings on whether to hold an evidentiary hearing, are reviewed for an abuse of discretion. *Heath*, ¶ 13.

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ARGUMENT

I. Adams's claim that his PCR proceeding should have been in front of the same district court that imposed his sentence fails.

A. Background

Lake County District Court Judge C.B. McNeil presided over Adams's 2006 criminal case up until his 2008 sentencing, and continued to preside over his revocation proceedings up until 2011. (*See, generally,* Docs. 1-65.) Judge McNeil retired in 2013, and passed away in 2017.[6]

Thereafter, Judge James A. Manley took over Adams's case during his subsequent revocation proceedings. In summer 2022, Judge Manley retired.[7]

At the time of Adams's filing of his second PCR petition on November 17, 2022, the judges of the Twentieth Judicial District Court were Judge Deborah Kim Christopher and Judge Molly Owen[8] (Judge Christopher has since retired). (DV-22-204 Doc. 1.) The same day as the filing of the petition, a PCR case was opened under Cause No. DV-24-22, and Judge Christopher was assigned to the case. (*See* ROA Docket Sheet, "Status History" and "Judge History".) On

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[6] District Judge CB McNeil Announces Retirement - Flathead Beacon (Article dated April 24, 2013, accessed March 26, 2024).
Retired judge CB McNeil dies at 80 after brief illness (missoulian.com) (Article dated April 21, 2017, accessed March 26, 2024).

[7] District Court Judge Manley to retire this summer | Lake County Leader (leaderadvertiser.com) (Article Dated March 17, 2022, accessed March 26, 2024).

[8] Gov. Gianforte Appoints Molly Owen to Twentieth Judicial District Court (mt.gov) (Press Release Dated May 21, 2022, accessed March 26, 2024).

August 24, 2023, Judge Christopher denied Adams's PCR petition. (DV-22-204 Doc. 2.)

B. Discussion

Adams argues that Montana law "requires the judge who sentenced the petitioner" must "preside over any postconviction proceedings." (Appellant's Br. at 8.) Adams proposes that a PCR proceeding should be considered in the same "department" as it was originally filed. (*Id.*) Finally, Adams argues that he had no notice which judge was considering his petition until the order dismissing his petition was filed. (*Id*. at 8-9.)

Montana Code Annotated § 46-21-101(1) provides:

> A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that a sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy *may petition the court that imposed the sentence* to vacate, set aside, or correct the sentence or revocation order.

(Emphasis added.)

Here, Adams properly filed his PCR petition in the jurisdiction that imposed the original criminal sentence. But "[Mont. Code Ann. § 46-21-101(1)'s] plain language provides no guidance" as to "which judge may preside over the

post conviction proceeding once the petition is filed in the proper court." *Jordan v. State*, 2007 MT 165, ¶ 9, 338 Mont. 113, 162 P.3d 863. Thus, this Court has looked to "other sources of statutory construction to determine the legislative intent." *Id.*

In *Jordan*, this Court examined *Coleman v. State*, 194 Mont. 428, 633 P.2d 624 (1981), which in turn examined the "history and purpose of § 46-21-101(1)[.]" *Jordan*, ¶ 10. After such examination, this Court concluded that the sentencing judge who presided over the criminal action should also preside over the PCR action "to avoid the great delay and burden that would be imposed on the courts if a judge other than the sentencing judge had to become familiar with the record for the purposes of conducting a post conviction evidentiary hearing." *Jordan*, ¶ 11.

Applying *Coleman*, the *Jordan* Court considered a situation where Judge Swandal sentenced the defendant but Judge Phillips denied the defendant's PCR petition. This Court noted that after Jordan complied with the requirements of Mont. Code Ann. § 46-21-101(1), the "assignment of Jordan's post conviction case to the proper judge fell to the court once Jordan filed the petition in the proper court." *Jordan*, ¶ 12. This Court reasoned that *Coleman* "requires the court to assign Jordan's post conviction matter to Judge Swandal" because that judge "sentenced Jordan in the underlying criminal action[,]" thus Judge Swandal had more knowledge of the underlying case history. This Court reasoned that

Judge Phillips was improperly assigned because there was no indication "that Judge Swandal would have been unavailable to preside over Jordan's post conviction proceeding and Jordan presented no showing that would have permitted Judge Swandal's recusal." *Id.*, ¶ 12 (citing *Coleman*, 194 Mont. at 425, 633 P.2d at 628). This Court therefore reversed and remanded the case for Judge Swandal to consider Jordan's PCR petition. *Jordan*, ¶ 14.

Here, like in *Jordan*, Adams was entitled to have the same district court that presided over his criminal proceedings also preside over his PCR proceedings. However, unlike in *Jordan*, where the original district court judge who handled the criminal case was otherwise available, here, Judge McNeil was unavailable because he had passed away. Thus, it was necessary that Adams's PCR proceeding be assigned to a new judge. The interests of Mont. Code Ann. § 46-21-101(1) could no longer be served, regardless of which new judge presided over Adams's PCR petition, because any judge assigned to Adams's petition would have been on equal footing as to familiarity with the underlying criminal case. *See, e.g., Patrick v. State*, 2011 MT 169, ¶ 25, 361 Mont. 204, 257 P.3d 365 (analyzing Mont. Code Ann. § 46-21-101(1) and concluding that "[a]ny judge who assumes jurisdiction over a postconviction proceeding after recusal of a sentencing judge possesses no greater knowledge of the facts and circumstances than any other judge who might subsequently assume jurisdiction.") Thus, there is no reversible error stemming

from Judge Christopher deciding the PCR proceeding and Adams did not suffer prejudice in any event.

Adams nonetheless argues that he suffered prejudice because he was not "aware" that Judge Christopher had taken over the case until she issued her order dismissing his petition. But, as the docket shows, Adams filed his petition on November 17, 2022 and the civil PCR docket was opened that day and assigned to Judge Christopher. (*See* ROA.) Even assuming Adams was unaware of Judge Christopher's assignment to his case, all he needed to do was inquire to the district court clerk or simply examine the docket to ascertain which judge was presiding over his case. Regardless, the appointment was not improper, so Adams did not suffer prejudice.

II. Adams's first PCR petition was timely filed, but that fact is not dispositive here because the district court rejected the petition on the merits.

A. Background

Judgment was entered against Adams on June 18, 2007. (Doc. 32 at 7.) Adams filed his first PCR petition and supporting memorandum on June 30, 2008. (Docs. 46-47.) The State responded on July 16, 2008. (Doc 49.) However, possibly due to intervening revocation proceedings (*see* Docs. 50-64), or because,

as Adams admits, he filed his petition in the wrong docket, the district court never issued an order regarding the petition.

Adams filed a second PCR petition and supporting memorandum on November 17, 2022. (DV-24-204 Doc. 1.) In 2023, the district court denied the first petition as untimely, in part because "[t]he petition had to be filed before June 18, 2008[.] (DV-24-204 Doc. 2 at 1.)

B. Discussion

Adams is correct that his first petition was timely filed, but this fact alone is not dispositive. *See* Mont. Code Ann. § 46-21-102 (incorporating the time to appeal to this Court plus 1 year for a conviction to be final for PCR petition filing if the petitioner has not appealed his conviction). This Court will affirm a district court that reaches the right result, even if for the wrong reason. *State v. Marcial*, 2013 MT 242, ¶ 20, 371 Mont. 348, 308 P.3d 69. Here, the district court nonetheless addressed and rejected all the claims Adams raised in his first petition on the merits, including his *Brady* and IAC claims. The court accomplished this by explaining "[t]he authority and rationale in the State's response brief filed July 16, 2008 is adopted by the Court and incorporated herein by reference." (DV-24-22 Doc. 2 at 1; *see also* Doc. 49, State's 2008 response.) Accordingly, while the procedural bar was wrongly applied, the district court also rejected the

claims on the merits, thus Adams cannot show that the district court's dismissal of his claims was in error, as further explained below.

III. This Court should reject Adams's claims that: (1) he has newly discovered evidence supporting a claim of innocence; (2) his counsel was ineffective; and (3) the prosecution withheld exculpatory evidence under Brady.

A. Newly discovered evidence claim

Adams claims that his attorney discovered in 2022 that Officer Brown was "no longer" a "law enforcement officer at the time petitioner entered his plea," which Adams claims constitutes newly discovered evidence (NDE) under Mont. Code Ann. § 46-21-1022. (Appellant's Br. at 6.) But this is not "newly" discovered evidence because, according to Adams's own affidavit, he knew prior to his guilty plea that Officer Brown was no longer an officer with the Ronan PD, and, further, knew that Officer Brown had a pending criminal charge. (DV-24-204 Doc. 1, Ex. 2 at 2.) Additionally, information pertaining to Officer Brown departing Ronan PD was also available prior to sentencing in the PSI (Doc. 30 at 7), and Adams affirmed he had no corrections to the PSI (Doc. 31). Given Adams's prior knowledge of this information, he still decided to plead guilty and

stipulated to the facts supporting his plea as explained in the State's affidavit. Finally, such a claim conclusively fails because it is not a claim of innocence.[9]

B. IAC claim

The two-part *Strickland* test applies to challenges to guilty pleas based on ineffective assistance. *Hill v. Lockhart*, 474 U.S. 52, 57-58 (1985). "Where, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Id.*, 474 U.S. at 56 (internal quotation marks and citations omitted). "[T]o satisfy the 'prejudice' requirement, the defendant must show that there is reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id*. at 59; *see also Padilla v. Kentucky*, 559 U.S. 356, 372 (2010) ("[T]o obtain relief on this type of claim, a [petitioner] must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.").

Adams argues that his counsel "failed to investigate and discover" that Officer Brown "was no longer a peace officer because he had been criminally

[9] The purpose of raising a NDE claim is to overcome the PCR time bar to present a new claim of innocence. But, because Adams's 2008 petition was timely and raises the same claims as the 2022 petition, and, further, because Adams does not present a new claim of innocence, Adams's 2022 NDE claim itself is irrelevant. *See* Mont. Code Ann. § 46-21-102(1)-(2).

convicted." (Appellant's Br. at 7.) Adams claims he suffered prejudice because, if defense counsel had discovered the information, it would have "dramatically improve[d] plea negotiations." (*Id.* at 12.)

1. Deficiency

Adams does not raise the only argument that he could make, that his plea was involuntary due to inadequate advice from Goen. In any event, nothing exists in the record—other than Adams's conclusory and self-serving allegations—to suggest that Goen was ineffective. Goen interviewed Officer Brown, reviewed the dispatch tape, and hired an investigator—who was investigating Adams's case right up until the point of Adams's guilty plea in April 2007. In fact, Adams affirmed he was voluntarily pleading guilty after being fully informed of the possible consequences of proceeding to trial, the strength of his case, and the benefits of his plea agreement. (Doc. 28.) While the record shows that Goen *did* conduct an investigation, but no affidavit from Goen explaining his representation has been provided, it cannot reasonably be determined whether Goen failed to investigate the particular matter that Adams complains of—Officer Brown's commission of a prior offense related to the purchase of a stolen generator and subsequent resignation.

However, assuming for argument's sake that Adams *did* inform Goen about Officer Brown's prior conduct, as he asserts, Adams cannot show that Goen's

advice to plead guilty was outside the wide range of professional competence demanded of criminal attorneys. For example, Goen capably secured a deal with the State, and was able to: (1) get Adams's PFO designation erased, thus limiting Adams's exposure to a higher maximum sentence; (2) get the assault on a peace officer charge reduced to criminal endangerment, thereby eliminating Adams's exposure to a mandatory minimum prison sentence of two years;[10] and (3) obtain a deal for an almost fully suspended sentence.[11] Given the possible favorable disposition at the time, Goen may have further reasoned that Officer Brown's prior unrelated conduct was irrelevant and Adams would have lost at trial. Goen could also have reasonably considered the possibility of the State stacking additional charges if they did not take the plea deal—particularly because Officer Brown had chased Adams down in his patrol vehicle at 93 miles per hour, and Adams admitted he had subsequently fled from the scene on foot and had been intoxicated, even blacked out. It would not have been deficient performance to advise Adams to plead guilty, even with the information regarding Officer Brown.

[10] *Compare* Mont. Code Ann. § 45-5-210(2)(a)(i) (assault on a peace officer penalty) *to* 45-5-207(3) (criminal endangerment penalty).

[11] While Adams now insists in his affidavit that his sentence was harsher than he anticipated, it was a joint recommendation per to the plea agreement. Adams's sentence was extended due to his inability to comply with his suspended sentence conditions, which led to several revocations.

As the Supreme Court has explained "it is difficult to establish ineffective assistance when counsel's overall performance indicates active and capable advocacy." *Richter*, 562 U.S. at 111 (citing *Murray v. Carrier*, 477 U.S. 478, 496 (1986)). And counsel only has a duty under *Strickland* to "make reasonable investigations *or* to make a reasonable decision that makes particular investigations unnecessary." *Cullen v. Pinholster*, 563 U.S. 170, 195 (2011) (citing *Strickland*, 466 U.S. at 691).

In any event, Adams ultimately *did* decide to plead guilty—notwithstanding the information he admits he already knew about Officer Brown. Adams does not allege in his petition that he was coerced to plead guilty, nor does he allege that he did not consent to the plea negotiations and strategy that Goen employed. Adams fails to show, or even argue, that his guilty plea was involuntary based on his already admitted knowledge of Officer Brown's prior unrelated conduct. Even after Officer Brown's departure from Ronan PD was confirmed in the PSI, Adams never filed a motion to withdraw his plea, nor did he appeal his criminal sentence.

Adams has not shown that defense counsel's conduct during the change of plea stage fell below an objective standard of reasonableness measured under prevailing professional norms. *See Whitlow*, ¶ 20.

2. Prejudice

"[W]here the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error 'prejudiced' the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial." *Hill*, 474 U.S. at 59.

Adams further cannot show a "reasonable probability" that, had his counsel further investigated Officer Brown's status, he "would not have pleaded guilty and would have insisted on going to trial." *Id*. Nor does Adams even argue as much—rather, his claim is that his plea position with the State would have been more favorable with this information. As explained above, even if Goen had additional information related to Officer Brown, given the undisputed facts against Adams and the deal Goen secured, it likely would not have changed Goen's recommendation to plead guilty. And, given that there were dispatch tapes in conjunction with Officer Brown's testimony, there is little chance that Adams could argue at trial that a reasonable inference could be made that Officer Brown was somehow dishonest in providing his account of what occurred when Adams

ran him off the road in 2006. *See, e.g., Johnson v. United States*, No. 4:10-CV-01531-CDP, 2011 U.S. Dist. LEXIS 44212, at *10-11, 2011 WL 1559764 (E.D. Missouri, April 25, 2011) (rejecting IAC claim based on allegations that officers were fired, had resigned, or were sent to jail when there was no evidence presented that the officer in the petitioner's case "lied on the affidavit involved in Johnson's case.") Adams's IAC claim fails.

C. Brady

1. Materiality

Adams's *Brady* claim fails. Adams argues that his discovery that Officer Brown was no longer a POST-certified officer at the time of his plea "seems" to be "material" because "the defendant was charged with Assault on a Peace Officer." (Appellant's Br. at 6.) Thus, Adams's claim must be that since Officer Brown was not an "officer" at the time of his plea, this fact was material to his conviction.[12] But Adams was not convicted of assault on a peace officer, he was convicted of criminal endangerment, which he stipulated to through his plea of guilty even after discovering the information about Officer Brown. There is no "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Bagley*, 473 U.S. at 682 (1985).

[12] There is no dispute that Officer Brown was an officer at the time of the offense. Adams provides no authority supporting his contention that he could not be convicted if the person was not an officer at the time of his plea.

Adams next argues materiality because the information "undermine[d] the confidence in the plea colloquy or even the decision to take a plea." (Appellant's Br. at 12.) Adams does not elaborate, nor does he provide a transcript of the change of plea hearing. But Adams was aware of the information and still decided to plead guilty. Adams fails to show the information "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Ilk*, ¶ 37.

2. Exculpatory/impeaching evidence

Adams does not meet this prong because he raises no argument in his brief as to how Officer Brown's unrelated prior conduct was impeaching, that is, evidence bearing on the "reliability of a given witness" as "determinative of guilt or innocence[,]" *Giglio*, 405 U.S. at 154 (1972), nor does he explain how the evidence was exculpatory, or "[e]vidence which tends to clear the accused of guilt and vitiate the conviction." *Hatfield*, 269 Mont. at 311, 888 P.2d at 902. Thus, Adams waives any argument that Brown's conduct was exculpatory or impeaching to Adams's conviction for criminal endangerment and his *Brady* claim fails.

3. Suppression

"As a general rule, the State's obligation to disclose information under *Brady* does not impose a duty on the prosecutor or investigators to learn of information possessed by other jurisdictions or agencies that have no involvement

in the investigation or prosecution at issue." *McGarvey v. State*, 2014 MT 189, ¶ 16, 375 Mont. 495, 329 P.3d 576 (citing *U.S. v. Morris*, 80 F.3d 1151, 1169-70 (7th Cir. 1996)). Adams fails to show that the county prosecutor possessed and suppressed evidence related to Officer Brown's charges, conviction, and resignation. Adams admits that Officer Brown's case was not prosecuted by the county attorney but instead by "DCI."

Regardless, Adams fails to show that the prosecution suppressed information that was otherwise available to him. The State explained in its 2008 response that the information related to Officer Brown's complaint, the judgment, and other court documents pertaining to Officer Brown were of public record and available to Adams, thus Adams could have easily obtained the information regarding Officer Brown's case through reasonable diligence. *See McGarvey*, ¶ 17 ("[N]o *Brady* violation exists" if the party is aware of the existence of specific evidence "and defense counsel could uncover the evidence with reasonable diligence.").[13] Officer Brown received his deferred sentence on January 22, 2007, and Adams

[13] The applicable *Brady* law has since changed, and the rule is now slightly different, in that "defense counsel cannot ignore that which is given to him or of which he is otherwise aware." *Garding*, ¶ 31 (citing *Amado v. Gonzalez*, 758 F.3d 1119 (9th Cir. 2014)). However, this Court does not apply subsequent changes in law, but applies the law then-existing at the time of the plea agreement. *State v. Andrews*, 2010 MT 154, ¶¶ 12-14, 357 Mont. 52, 236 P.3d 574. In any event, under either the "reasonable diligence" or "awareness" standard, Adams's claim fails.

pleaded guilty to his offense May 2, 2007. Thus, with knowledge of the information prior to his guilty plea on May 2, 2007, there is likely little merit to Adams's speculation that the actual evidence relating to Officer Brown's conviction had already been "destroyed" or "sealed" at the time of his guilty plea. *See* Mont. Code Ann. § 46-18-204 (allowing dismissal of deferred charges upon compliance with Mont. Code Ann. § 46-18-208, which, in turn, allows petitioning to terminate the sentence after two years or one-half of the sentence, whichever is less, upon compliance with deferral conditions). Even still, in such a scenario, the deferred prosecution information is not destroyed, it is simply reclassified as CCJI and available to the public upon a showing of "good cause" to the district court. Mont. Code Ann. § 46-18-204(2).

Even assuming, *arguendo,* that the evidence regarding Officer Brown was unavailable to Adams in May 2007, it would only qualify as "potentially exculpatory evidence," which is "evidence with relatively speculative defensive value." *State v. Fisher*, 2021 MT 255, ¶ 31, 405 Mont. 498, 496 P.3d 561. This is because Adams fails to argue, much less establish, that the evidence in question was favorable, that is, exculpatory. *See Fisher*, ¶ 32 (Without such a showing [that the evidence was favorable], the evidence lost or uncollected was merely *potentially exculpatory*."). In such a scenario, the defendant "must show bad faith by the State

in order to establish a due process violation." *State v. Giddings*, 2009 MT 61, ¶ 48, 349 Mont. 347, 208 P.3d 363. Adams fails to show bad faith pursuant to normal court processes and procedures for deferred sentences.

D. Conclusion

Adams fails to show any error in the district court's rejection of his newly discovered evidence claim, his IAC claim, or his *Brady* claim. This Court should affirm the district court's order.

IV. This Court need not address Adams's final claim. Even if it does, the district court did not abuse its discretion in not holding an evidentiary hearing or ordering a response.

While Adams raises the district court's dismissal of his petition without a response or hearing in his "Statement of the Issues," he fails to raise the issue again in the body of his argument. "It is not this Court's job to conduct legal research on [Appellant's] behalf," to "guess as to his precise position, or to develop legal analysis that my lend support to that position." *State v. Gomez*, 2007 MT 2011, ¶ 33, 337 Mont. 219, 158 P.3d 442 (rejecting the appellant's claims based on a "fail[ure] to cite a case" in support of issues 2, 3, and 4). This Court may summarily reject Adams's claim. *See Gomez*, ¶¶ 31-35 (rejecting the claim based on M. R. App. P. 12(1)(g), which, in turn, provides "The argument shall contain the contentions of the appellant with respect to the issues presented, and the

reasons therefore, with citation to the authorities, statutes, and pages of the record relied on[.]"); *see also* M. R. App. P. 8(2) (It is Appellant's "duty to present the supreme court with a record sufficient to enable it to rule upon the issues raised[]" and failure to do so "may result in dismissal of the appeal or affirmance of the district court on the basis the appellant has presented an insufficient record."). But, even if this Court considered the claim, it would fail.

This Court has repeatedly affirmed a district court's right to dismiss a petition without holding a hearing if the petition "fails to satisfy the procedural threshold set forth in § 46-21-104(1)(c), MCA." *Marble v. State*, 2015 MT 242, ¶ 38, 380 Mont. 366, 355 P.3d 742 (citing *Hamilton*, ¶¶ 10-11). This Court affirms a district court's order denying a PCR petition without holding an evidentiary hearing when the petitioner either failed to state a claim upon which relief could be granted or failed to provide the required evidentiary support for the claim. *Hamilton*, ¶¶ 10-32; *Herman*, ¶¶ 24-52.

Here, the district court was well within its discretion to deny and dismiss Adams's claims without conducting an evidentiary hearing. Adams never filed any transcripts from his criminal case. Adams never obtained an affidavit from his counsel that explained his knowledge or lack of knowledge of Officer Brown's status as related to his strategy in securing a plea deal to avoid trial. By failing to obtain an affidavit from his counsel explaining his representation, Adams wholly

failed to support his IAC claim with anything other than his self-serving affidavit. *See* Mont. Code Ann. § 46-21-104(1)(c) (PCR petition must "have attached affidavits, records, or other evidence establishing the existence of those facts"); *Ellenburg*, ¶ 16 ("a petition for postconviction relief must be based on more than mere conclusory allegations"); *Kelly v. State*, 2013 MT 21, ¶ 10, 368 Mont. 309, 300 P.3d 120 (mere "self-serving statement" by defendant insufficient). And Adams's *Brady* claim never even provided any argument on how Officer Brown's unrelated theft conviction was relevant, much less exculpatory and material, to Adams's voluntary plea of guilty for the offense of criminal endangerment. (*See* DV-22-204 Doc. 1 at 13.)

Furthermore, in this case, the State *did* respond to Adams's original petition in 2008, which the district court expressly adopted as rationale for its decision. The district court was not required to hold a hearing due to the evidentiary insufficiencies provided in Adams's petitions. Mont. Code Ann. § 46-21-104(1)(c).

///

CONCLUSION

The district court's denial of Adams's petition for postconviction relief should be affirmed.

Respectfully submitted this 22nd day of April, 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 8,176 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

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CERTIFICATE OF SERVICE

I, Roy Lindsay Brown, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 04-22-2024:

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