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Case Number: DA 25-0172

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0172

SCOTT WAYNE ELLISON,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

REDACTED BRIEF OF APPELLEE

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, The Honorable John A. Kutzman, Presiding

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STATEMENT OF THE ISSUE

Whether the district court erred when it denied Ellison's Petition for Postconviction Relief (PCR) without conducting a hearing.

STATEMENT OF THE CASE

Scott Wayne Ellison was convicted by a jury of three counts of incest, two counts of sexual intercourse without consent, and one count of indecent exposure for sexually abusing his adopted children, who were all under the age of 12. (7/17/18 Tr. (Tr-1); 7/18/19 Tr. (Tr-2); 7/19/19 Tr. (Tr-3).)[1] The court sentenced Ellison to the maximum 100-year prison term on every count, with none suspended, all to be served consecutively. *State v. Ellison*, 2022 MT 20N, ¶¶ 2, 5, 408 Mont. 539, 502 P.3d 176. This Court affirmed Ellison's convictions. *Id*.

[1]Transcripts of the criminal proceedings were submitted in Ellison's direct appeal and are part of this Court's record in Case No. DA 19-0581.

Ellison petitioned for PCR and filed three addendums with memorandum and exhibits.[2] (Docs 3, 4, 5, 11.)[3] Pursuant to the court's order, the State filed a response on July 24, 2024. (DC-Doc. 130; Doc. 6.) Ellison filed a reply, as well as various other pleadings, which the State moved to strike. (Docs. 12-18.)

On December 16, 2024, the district court denied Ellison's PCR petition (Petition). (Doc. 23 (attached as App. B).) The court also denied Ellison's various motions and the State's motion to strike. (*Id*.)

On February 19, 2025, Ellison notified the court that he had not received the court's order denying PCR and that the clerk had failed to docket his notice of the State failing to respond to his request for admissions. (Doc. 24.) On February 24, 2025, the court issued an order explaining that the court's order denying PCR relief had mooted Ellison's request for admissions. (Doc. 25.)

Ellison filed his notice of appeal on March 3, 2025, and submitted his Opening Brief (Br.) on April 22, 2025, along with over 100 pages of appendices.

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[2] Ellison filed PCR-related documents in both his PCR case and underlying criminal case, Cause No. CDC-18-306. Many PCR documents filed in Cause No. CDC-18-306 where later "refiled" in Cause No. DV-23-064. (*See* Appendix A for a summary of PCR documents and where/when they were filed.) For consistency, when possible, the State will cite to documents filed in Cause No. DV-23-064, but will use the earliest filing date, regardless of whether it was docketed in the criminal case or PCR case.

[3] Citations to documents from Ellison's PCR proceedings, Cause No. DV-23-064, will be "Doc." Citations to documents from Ellison's criminal proceedings, Cause No. CDC-18-306, will be "DC-Doc."

STATEMENT OF THE FACTS

I. Criminal proceedings

A. Offenses, investigation, charges

Ellison and his wife, T.E., were foster parents to J.E. (born in 2005), O.E. (born in 2006), B.E. (born in 2007), and K.E. (born in 2008), off and on from 2011 until 2016 when they adopted all four children. (Tr-1 at 220-21, 249-51, 278-82, 292-93; Tr-3 at 505.) The children all had a history of mental health/behavioral issues related to their upbringing, but after being adopted, those issues stabilized to the point that they did not need to see their counselor, Lisa Anderson-Mangan, LCPC, RPT, as often. (*Id*.; Tr-2 at 349-60.) Ellison had been medically discharged from the military and was attending a local college, so he was home alone with the children when T.E. went to work. (Tr-1 at 295-96.)

After the adoption was final in 2016, Ellison began sexually abusing the children, but the abuse did not come to light until the spring of 2018 when 12-year-old J.E. ran away from home. (Tr-1 at 224-28, 283-84; Tr-2 at 86-105.) After he was found and returned home, T.E. did not push J.E. to explain why he left, but two days later she discovered a letter J.E. had written wherein he said he believed his dad had raped his sister. (*Id*. at 228-29, 294-96; Tr-2 at 87-105; Tr. Ex. 28.) Initially, T.E. thought J.E. was referring to his biological father and she called J.E. to his room to talk to him about it. (*Id*.)

J.E. told T.E. he was referring to Ellison when he wrote "Dad" and that the sister he referred to was O.E. (Tr-1 at 242-48, 289-90; Tr-2 at 86-105.) T.E. did not believe J.E. because she never thought Ellison would do that. (*Id*.) During their conversation, Ellison kept coming to J.E.'s room to intervene. (*Id*.) At one point, Ellison asked T.E. if J.E. had said he was going to kill him. (*Id*.) Ellison's question concerned T.E. because it came from out of the blue and she could not fathom why Ellison would say that. (*Id*.) T.E. eventually had Ellison read the letter and when Ellison said, "Really?" to J.E., J.E. disclosed that Ellison had been sexually abusing him. (*Id*.) When T.E. later asked her husband why J.E. would accuse Ellison of abusing him, Ellison said he did not know and agreed they should take J.E. to see his counselor. (*Id*.)

The next day, T.E. arranged for J.E. to see Anderson-Mangan and spoke to a social worker at Child and Family Services (CFS). (Tr-1 at 253-59, 286-88.) CFS did not intend to intervene and instead wanted to see how J.E.'s therapy appointment went. (*Id*.) Although T.E. told Ellison that CFS was not getting involved, Ellison immediately said he would move out of the house. (*Id*.) T.E. was surprised by his offer, but was relieved since it would mean the children would not be removed even if CFS opened an investigation. (*Id*.)

When T.E. asked Ellison again if any of J.E.'s disclosures were true, Ellison admitted he had masturbated in front of J.E. and eventually admitted he had also

masturbated when O.E., B.E., and K.E., were in bed with him. (Tr-1 at 260-64, 266-73.) Ellison admitted it occurred during several separate occasions as the children took turns lying in bed with him. (*Id*.) When T.E. asked Ellison, "What the fuck is wrong with you?," Ellison merely replied, "I know," and agreed he should not have unsupervised contact with the children. (Tr. at 266, 288-90.) During their conversation, Ellison cried and was distraught. (*Id*.) Immediately after talking to T.E., Ellison moved out. (*Id*.)

Tracy Hemry forensically interviewed the children on May 1, 2018. (DC-Doc. 31.1; Exs. 20-22, 24.) J.E. disclosed that Ellison showed him videos about masturbation and then masturbated in front of him. (*Id*.) J.E. reported seeing Ellison masturbate two other times over the past year. (*Id*.) O.E. disclosed that Ellison showed her a video of women masturbating and she saw Ellison "messing with" J.E. (*Id*.) Both O.E. and B.E. described seeing Ellison masturbate while they were in bed with him, and B.E. said Ellison asked her to do weird stuff with his penis. (*Id*.) K.E. did not make any disclosures at that time. (*Id*.)

Later that same day, Detective Noah Scott interviewed Ellison and confronted him with the children's disclosures. (Tr-3 at 483-52; Ex. 26.) Ellison admitted masturbating in front of J.E. but claimed it was just to educate him. (*Id*.) Ellison stated he did not "remember" doing anything sexual with O.E. or B.E., touching J.E., or showing O.E. a video about masturbation. (*Id*.) When asked why

he could not remember showing O.E. a video, Ellison agreed that O.E. would have a better memory about anything that happened. (*Id*.) Ellison eventually admitted that he had masturbated while in bed with the children but claimed they could not have seen what he was doing. (*Id*.) During the interview, Ellison did not show any emotion or get upset or angry when Detective Scott explained the allegations the children made or when he told him he was under arrest. (*Id*.)

Shortly after Ellison was charged, T.E. found some video diaries Ellison had recorded and saved on their computer hard drive. (Tr-1 at 273-76; Tr. Exs. 27, 29-31.) Ellison cried throughout the videos during which he apologized to his family and asked for forgiveness for what he had done. (*Id*.) Ellison begged T.E. to make sure the children went to counseling so they would not think it was alright to do what he did. (*Id*.) Ellison discussed financial matters and things that would need to be done when he went to prison. (*Id*.)

On one video, Ellison called his mother and cried and said he could not help it. (Tr-1 at 273-76; Tr-1 (Vol. 2) at 18-19; Ex. 27.) On another video, Ellison read some notes/letters, three of which he left on the refrigerator where T.E. found them. (*Id*., Exs. 29, 30, 31.) Those three notes stated:

> Please tell [L.E.] that I will always love him and that I'm sorry he never had the best dad I thought I could be but my mind was already screwed up. [J.T.E.] I never did this to you or [L.E.]. I'm sorry my actions hurt others there is nothing I could say to J.E., O.E., B.E., K.E. or you that would ever explain me or the things I've done. I'm truly sorry and hope you all can move on or learn to forget.

> I will try to pay off the debt. I have several insurance in case I die in prison. My TSP-File to get it. My VA will stop so apply for my SBP (Base MPF). You will need death decree as long as you don't re-marry otherwise it should go to [L.E.] My monthly retirement checks.
>
> Please tell my mom not to gossip about this and that I love her and [M.] very much. Please [tell] my Dad I forgive him for all the crap I went through when I was younger. I love him very much too. To [B.]-I'm sorry I did not seek help earlier and ask her for help. I as [sic] too ashamed to admit I had a problem. I love her and whole family very much.
>
> God—I disgraced all that you stand for. Please forgive me my sins. I accept my eternal damnation for failing to follow your guidance.

(*Id.*)[4]

The State charged Ellison with incest and indecent exposure to a minor. (DC-Docs. 1, 2, 6.) In the coming months, O.E. made additional disclosures and K.E. also disclosed abuse that resulted in the charges against Ellison being amended twice. (DC-Docs. 10, 11, 12, 13, 30, 31, 31.2.)

B. Relevant pretrial proceedings

Ellison's initial appearance in justice court was on May 2, 2018. (DC-Doc. 6.) The order following that appearance included a notation stating: "Army/AF Veteran—PTSD." (*Id.*) At his initial appearance and June 7, 2018 arraignment,

[4]L.E. (born in 2015) and J.T.E. (born in 1997) are T.E. and Ellison's biological sons.

the court reviewed the charges and penalties, which Ellison stated he understood. (*Id*.; Doc. 8.)

In July 2018, Carl Jensen entered his notice of appearance having been retained by Ellison. (DC-Docs., 7, 8, 17, 19.) Jensen was present with Ellison for the two successive arraignments after the charges were amended. (DC-Docs. 24, 33.) During those hearings, after the court reviewed his rights, the charges against him, and the potential penalties, Ellison entered pleas of "not guilty." (*Id*.)

Jensen indicated on the omnibus form that Ellison's fitness to proceed was not at issue and that Ellison would not introduce evidence of mental disease or defect. (DC-Doc. 22.) Jensen filed successive motions for bail reduction, with the last one alleging Ellison's medical needs were not being met in jail. (DC-Docs. 20, 25.)

The court conducted a bail hearing on August 16, 2018, where Ellison testified that he could make $40,000 bail and would live in a camper on the base. (8/16/18 Tr.) Ellison stated he was a full-time student at the University of Providence and had received 90 percent disability through the VA since 2012. (*Id*.) When asked the basis for his disability, Ellison replied, "Oh, gosh. Asthma, sleep apnea, back injuries, PTSD. I have anxiety issues, C spine, TMJ for the mouth. I had a TBI. Let me think what else. Let's see. I can't remember any of the other ones." (*Id*. at 6-7.) When asked what medical conditions made incarceration

problematic, Ellison referred to his sleep apnea, asthma, and back injury that required a spinal stimulator. (*Id*.) Ellison added that he had been seeing his VA counselor every week and claimed that if he asked to see a counselor while in jail, they would put him on suicide watch. (*Id*. at 9.) The court denied the motion to reduce bail, noting there was insufficient evidence that Ellison's needs were not being met. (*Id*.)

Ellison bonded out of jail on December 9, 2018. (Doc. 77 at 5.) But within days, Ellison violated the conditions of release by having gifts delivered to the victims with notes instructing them not to open them until after the trial. (*Id*. at 6.) Ellison's bond was revoked, and he was arrested on December 21, 2018. (*Id*.) The State later learned that while out on bond, Ellison had looked up one of the female detention officers on Facebook, downloaded photographs of her, and attempted to mail the photos to inmates in the jail. (6/7/19 Tr. at 37.)

In his April 2019 motion to dismiss on speedy trial grounds, Ellison argued that he "had suffered substantial pretrial anxiety" and "suicidal ideation." (DC-Doc. 45.) Ellison testified at the evidentiary hearing about his health issues. (6/7/19 Tr.) Ellison acknowledged that the detention staff had addressed the problems with charging his spine stimulator and getting his CPAP machine but claimed he was not getting his mental health or pain medications. (*Id*.) When asked what his mental health issues were, the following exchange took place:

ELLISON: Anxiety issues, depression. I have claustrophobia, which didn't help when they put me into the new cell. I was having—over the years, I've had some hallucination, but I've been able to cut those down with the medicine they started giving me.

JENSEN: At the jail?

ELLISON: Yeah.

JENSEN: So you're getting some medication for the hallucinations?

ELLISON: Well, it's for the depression. And they said it's bipolar, depression, and it should help with the—the seeing stuff.

JENSEN: Okay. How has your anxiety been since you've been arrested?

ELLISON: Terrible inside, but—well, no matter what, it's been—even outside, it was terrible.

JENSEN: Okay. And in terms of your depression, how has that been?

ELLISON: It's been worse than before, because at least I had some kind of a counseling system set up with the Vet Center. I had a family that would talk. We'd get a—if we want to talk to mental health, we get a sheet of paper that gives us, here's some breathing techniques.
JENSEN: That's about it?

ELLISON: That's it.

JENSEN: Okay. How about your bipolar, is that being treated?

ELLISON: Yeah. It's the same medication.

JENSEN: As the depression medication? All right. Overall how has your mental health been since you've been arrested and incarcerated on this?

ELLISON: Not very good. I had a couple of issues.

JENSEN: You tried to commit suicide?

ELLISON: Yes, sir.

JENSEN: How many times?

ELLISON: Three times, total. Twice inside and once—

JENSEN: Outside?

ELLISON: Yeah.

(Tr. at 31-32.)

After talking about the financial toll caused by his circumstances and strained relationships with some family, Ellison described himself as "mentally, a little unbalanced," but admitted to the court he had always had anxiety and depression. (Tr. at 36, 38-39.) Ellison denied that the notes he had left for his wife were suicide notes, adding that the note to his "sister was about my PTSD issues that I did confess to her about." (*Id*. at 41.)

The district court denied Ellison's motion to dismiss on speedy trial grounds. (Doc. 77.) Relevant to the issue of Ellison's mental health, the court entered the following conclusions of law:

> 42. Here, the $100,000 bail set by this Court in connection with the *First Amended Information* was a proportionate response to the nature of the charges against Mr. Ellison, the increasing number of victims, and the [c]ourt's interpretation of the notes quoted in the *Charging Affidavit* as threatening imminent suicide. When the [c]ourt declined to reduce bond, Mr. Ellison found the money and bonded out. Then, according to the State, he defied the no-contact provision in his release conditions by sending the complaining witnesses gifts to be

> opened the week after his February 25 trial. The [c]ourt's revocation of bond and replacement with a new $200,000 bond was a proportionate response to this tampering allegation. *All* of his ensuing incarceration since December 21 results from *his* decision to send these gifts and notes.
>
> 43. The nature of the charges, the magnitude of the potential penalties, the consequent seriousness of the flight risk, the abuse of his second release on bond to try to tamper with the complaining witnesses, and his failure to connect his nonspecific complaints about conditions at the jail with his mental and emotional readiness to stand trial do not permit any finding that the conditions of Mr. Ellison's pretrial incarceration have been "oppressive…."
>
> . . . .
>
> 46. Mr. Ellison has provided no basis to support apportioning his claimed anxiety to delay rather than the prospect of facing six charges of various kinds of sexual offenses against his children, five of which carry a 100-year *minimum*.

(Doc. 77 at 16, 22-24 (emphasis in original).)

C. Trial

K.E. told the jury that Ellison had sexually abused him for a couple of years. (Tr-2 at 46-61.) Just like his three siblings, K.E. explained that Ellison would have one of them go into his bedroom after their mother left for work. (*Id*.) Ellison played truth or dare with K.E., during which he made K.E. perform oral sex on him. (*Id*.) When K.E. was in bed with Ellison, who was naked, Ellison made him watch videos of people having sex and talked to K.E. about what was happening on the video and made K.E. touch his penis. (*Id*.) K.E. further disclosed that Ellison "pushed his private" on, and in, K.E.'s butt, which was uncomfortable and

painful. (*Id*.) Ellison also made K.E. watch Ellison do the same things to J.E., which Ellison told K.E. was called "humping." (*Id*.)

O.E. told the jury that Ellison had raped her a week or two before J.E. ran away. (Tr-2 at 26-46, 423-24; Tr. Ex. 22.) Ellison made her take her clothes off and get into his bed. (*Id*.) Ellison made her get on top of him and he put his "private" in her "private," which caused O.E. pain. (*Id*.) O.E. kept telling Ellison to stop, but he would not. (*Id*.) O.E. described how Ellison grabbed her hand to make her "mess with" his "private" on multiple occasions. (*Id*.) Ellison also made O.E. watch him perform oral sex on J.E. when they were in the camper. (*Id*.)

O.E. also described how Ellison would have her lay in bed with him and make her watch him masturbate and watch pornography. (Tr-2 at 26-46; Ex. 21.) Ellison also played truth or dare with the girls, and O.E. explained that he made them undress and get in the shower with him. (*Id*.) Ellison made O.E. touch his penis once a week beginning when they were adopted in 2016. (*Id*.) O.E. further explained that Ellison touched her privates and made her insert a fake penis into his anus. (*Id*.) O.E. told the jury about Ellison inserting his penis into her vagina and that he threatened her not to tell anyone about him touching her and her siblings or he would go to jail, and she would have to go back to foster care. (*Id*.)

B.E. testified about Ellison masturbating in bed and described a time when Ellison made them play truth or dare and they had to undress and get into the

shower with him. (Tr-1 at 4-18.) Ellison also asked B.E. to put a ball in her privates, shave his genitals, and kiss J.E., all of which B.E. refused to do. (*Id*.)

J.E. testified that at the end of his fifth-grade year, Ellison started doing inappropriate and sexual things to him. (Tr-2 at 78-105.) J.E. explained that even though he never asked about masturbation, Ellison told him about it and demonstrated it for him. (*Id*.) J.E. was only 11 years old at the time and did not know anything about masturbation. (*Id*.) For a time, J.E. thought it was normal father-son interactions. (*Id*.) Initially, Ellison played truth or dare with J.E. and at first the "dares" were normal, but they evolved into taking off his clothes and sexual conduct. (*Id*.) Ellison also played a dice game with J.E. to decide what sexual act they would do with each other (*i.e*., each number was assigned a sexual act such as kissing, oral sex, or anal sex). (*Id*.) Ellison made J.E. sleep with him and performed oral sex on J.E. (*Id*.)

Like his siblings, J.E. explained that Ellison had one of them come into his bedroom when their mother went to work and, on Friday, he would choose one to return for a second time that week. (Tr-2 at 78-105.) J.E. also described how Ellison would do something nice or good for them (*e.g*., take them somewhere special or to a movie) to keep them from telling anyone. (*Id*.)

J.E. testified that Ellison told him what O.E. looked like naked and showed him a video that he had taken of O.E. without her clothes on. (Tr-2 at 88-105.)

J.E. explained that Ellison showed him the video to try and make him have sex with his sister. (*Id*.) After that happened, J.E. started to think Ellison was doing things to his sister and he looked up the definition of rape and then wrote it in the letter that T.E. found. (*Id*.) J.E. described an instance when Ellison took him and O.E. to the camper and, while he performed oral sex on J.E., Ellison asked O.E. to take her shirt off so he could do it better. (*Id*.) J.E. also stated that Ellison made K.E. and J.E. perform various sexual acts on each other. (*Id*.)

The State played Ellison's video diaries for the jury and admitted his written notes. (Tr. Exs. 27, 29-31.) Several counselors testified as well as the forensic interviewer and investigating detective. (Tr-2; Tr-3.) The defense called no witnesses. (*Id*.)

Following two hours of deliberations, the jury convicted Ellison of all six felonies. (Tr-3 at 576-78.)

D. Sentencing

Prior to sentencing, a presentence investigation report (PSI) and mental health/psychological evaluation by Dr. Robert Page were submitted to the court. (DC-Doc. 98.) The PSI reported that Ellison was "well spoken and cooperative" when interviewed. (*Id*. at 7.) Ellison had obtained a Bachelor of Science degree in criminal justice in 2015 and was working on a computer science degree when he was arrested. (*Id*.) Ellison reported that he suffered from [redacted]

[redacted] (*Id*. at 4, 7.) Ellison also alleged [redacted]. (*Id*.) The PSI writer reported that while the trial was pending, Ellison [redacted] (*Id*. at 8; DC-Doc. 99 at 7.)

Ellison set out objections and corrections to the PSI in his sentencing memorandum. (DC-Doc. 100.) Ellison maintained his innocence and requested leniency from the court, stating that he "suffers from a number of physical ailments including chronic back pain" and PTSD, "which he has received treatment for at the veteran's hospital." (*Id*. at 3.) Ellison made no corrections to Dr. Page's evaluation and did not dispute the Tier 2 designation recommended by Dr. Page. (*Id*.)

Dr. Page described how [redacted]. (DC-Doc. 98, attached evaluation.) Ellison reported that [redacted] (*Id*. at 3.) When asked [redacted] (*Id*. at 6.) Ellison

told Dr. Page [redacted]

(*Id*.)

The district court found that "given the massive physical and emotional injury Mr. Ellison inflicted on these victims" there was no basis to either suspend any portion of the sentences or run any concurrently. (DC-Doc. 103 at 4.) The court sentenced Ellison to 6 consecutive 100-year terms in prison. (*Id*.)

II. Direct appeal

Ellison alleged three plain errors in his appeal to this Court: the charging document was insufficient for the indecent exposure charge; the jury was not properly instructed for the indecent exposure charge; and the State committed prosecutorial misconduct. *Ellison, supra*. This Court issued its opinion on January 25, 2022, affirming Ellison's conviction, having declined to exercise plain error review for any of the claims. *Id*. Ellison did not appeal this Court's decision.

III. PCR

Ellison timely filed a PCR petition and addendum with memorandum and exhibits on February 6, 2023. (Docs. 3, 4.) Ellison asserted six claims:

> CLAIM #1: MENTAL DISPORDER/ MENTALLY INCOMPETENT FOR TRIAL.

(a) Inability to Assist Counsel
(b) Mental and Physical Trauma in Military
(c) Deprivation of Prescribed Drugs after Arrest

CLAIM #2: INEFFECTIVE ASSISTANCE OF COUNSEL (Trial/Appellate)
(a) Failure to Investigate.
(b) Conflict of Interest- Prejudice.
(c) Abandonment of Counsel.
See MT Rules of Professional Conduct

CLAIM #3: NEW EVIDENCE IN SUPPORT OF MENTAL DISPORDER DEFENSE.
(a) Military records, confirming mental disporder.
(b) Mental Health diagnose [sic], confirming inability to stand trial.
(c) Documentation of Trauma. Military and Personal.

CLAIM #4: UNLAWFUL PLEA TO THE COURT. NOT MADE KNOWINGLY OR PURPOSELY.
(a) Plea was not made Knowingly, Voluntarily, or Intelligently; based upon mental disorder and history of mental disorder diagnose, [sic] and the deprivation of prescribed medication prior to and during trial phase.

CLAIM #5: PROSECUTORIAL MISCONDUCT.
(a) State failed to disclose that Petitioner attempted suicide while in the jail.

CLAIM #6: EQUAL PROTECTION UNDER THE LAW.
(a) Petitioner's counsel failed to investigate a PTSD defense

(Doc. 3 at 1.) Ellison added a seventh claim in his first addendum, cruel and unusual punishment, because detention staff denied him prescribed medications. (Doc. 4 at 1.)

Ellison's claims all revolved around his PTSD history and argument that he had been unfit to proceed or assist in his own defense and/or was not provided appropriate medications by his wife and the detention staff. (Doc. 3.) Ellison argued it had been T.E.'s responsibility to make sure he did not act inappropriately and get him his medications and claimed any admissions he had made were because T.E. told him what to say. (*Id*.) Ellison asserted he could not have acted either purposely or knowingly because he had not meant to harm anyone and when his medications were not right or on time, he was "unable to maintain [his] mental and emotional stability as needed." (*Id*. at ii.) Although he had made no mention of this to Dr. Page, Ellison claimed he had been sexually abused by a 30-year-old male cousin and a female cousin when she was in the seventh grade. (*Id*. at 9.)

Ellison asserted ineffective assistance of counsel (IAC) claims against Jensen for not investigating his mental health history, failing to have him evaluated for fitness to proceed and not asserting a mental disease/disorder defense at trial and sentencing. (Docs. 3, 4.) Ellison argued Jensen was ineffective for letting him plead "not guilty" because of his alleged mental infirmities and asserted that he did what Jensen told him to do at trial. (*Id*.) Ellison filed mental health records from several sources as well as some military records and articles and workbooks for addressing PTSD. (*Id*.)

On March 6, 2023, following the court's *Gilham*[5] order, Jensen filed an affidavit refuting each of Ellison's IAC allegations. (Docs 7, 8, 22.)

Ellison filed a second addendum and memorandum on April 14, 2023, that reiterated he had made six claims, and attached documents, several of which had already been filed and others that were illegible. (Doc. 5.) Ellison filed a third addendum and memorandum on June 29, 2023, again stating he had asserted six claims and attached additional documentation from the Department of the Army. (Doc. 11.)

Ellison filed a motion for extension for new evidence on May 1, 2024, followed by a request that the court confirm receipt of his motion later that month. (DC-Docs. 128, 129.)

On May 30, 2024, the district court issued an order addressing several issues. (DC-Doc. 130.) First, in response to Ellison's motion for extension of time, the court found it was moot as there was no deadline to extend. (*Id*.) Second, after explaining the confusing nature of the PCR documents being filed in different Cause Nos., the court ordered the State to respond to Ellison's PCR petition. (*Id*.) Finally, the court ordered Ellison to file all future pleadings in Cause No. DV-23-064 with appropriate certificates of service. (*Id*.)

[5]*In re Gillham*, 216 Mont. 279, 704 P.2d 1019 (1985).

The State submitted its response on July 24, 2024. (Doc. 6.) The State agreed Ellison's Petition was timely, but argued Ellison was entitled to amend his Petition only once so his second and third addendums should be rejected. (*Id*. at 11.) The State refuted that any of the documentation Ellison filed in his PCR case constituted "new" evidence. (*Id*.) The State argued that the prosecutorial misconduct claims and allegations concerning his mental health unrelated to Jensen's representation could have been raised on direct appeal, so Ellison was barred from raising those related claims in PCR. (*Id*. at 13-14.) Finally, relying upon Jensen's affidavit, the State addressed each of Ellison's IAC claims, demonstrating they all lacked merit. (*Id*.)

Ellison filed a reply on August 15, 2024. (Doc. 12.) That same day, Ellison filed Petitioner's Judicial Notice of Law and Petitioner's Judicial Notice of Fact. (Docs. 13, 14.) On August 23, 2024, Ellison filed a Motion for Change in Venue and Motion to Maintain Evidence and Exhibits for Future Adjudication. (Docs. 15, 16.) Ellison filed a Second Motion for Change in Venue and Notice of Lack of Subject Matter Jurisdiction on September 25, 2024. (Doc. 17.)

The State filed a motion to strike the pleadings Ellison had filed after the State's response. (Doc. 18.) Ellison filed a response to the motion to strike as well as a Motion for Relief from Judgment and request for admissions pursuant to Federal Rule of Criminal Procedure 36. (Docs. 19, 21.)

On December 16, 2024, the court denied Ellison's Petition without conducting a hearing. (App. B.) The court also denied the State's motion to strike and addressed the multiple pleadings filed by Ellison, including his judicial notices of law and fact. (*Id*.) The court denied Ellison's request that the judge recuse himself, as well as Ellison's motions to change venue, and rejected Ellison's subject matter jurisdiction argument. (*Id*.) The court denied Ellion's request to take judicial notice of allegedly "new" evidence or facts, finding they were incomplete, unorganized, and several lacked any corresponding date of service. (*Id*.) The court further found that Ellison's mental health records were not compelling, admissible, or even informative. (*Id*.)

Next, the court reviewed Jensen's affidavit that undeniably established Jensen was aware of Ellison's mental health history but had observed no signs suggesting Ellison was not fit to stand trial. (App. B at 7-8.) Jensen explained that Ellison had fully participated in his defense but had believed the children would not testify against him so he would not be convicted. (*Id*.) Jensen further explained there was no basis to pursue a mental disease/disorder defense because Ellison would not admit the charged conduct (other than masturbating in front of J.E.). (*Id*.)

Finally, citing the demanding filing requirements in PCR proceedings, the court determined that it was not necessary to conduct an evidentiary hearing, which

made Ellison's requests for admissions moot. (App. B at 10-11.) After acknowledging the significant sentences it had imposed, the court explained that:

> the record in that case and this civil PCR case establishes that Mr. Ellison knowingly agreed to a trial strategy that failed. He cannot now return to the starting line and relitigate the case using his new theories that this is all his wife's fault, that he was unfit to proceed, that his PTSD precluded forming criminal intent, that he had a viable mitigation defense, that his retained counsel is to blame for the foregone chance to explore these alternative tactics, or that the State somehow hid evidence of his PTSD.

(*Id*. at 11.)

STANDARD OF REVIEW

Claims of IAC present mixed questions of law and fact that this Court reviews *de novo*. *Oliphant v. State*, 2023 MT 43, ¶ 29, 411 Mont. 250, 525 P.3d 1214. This Court reviews an order denying PCR to determine whether the court's findings of fact are clearly erroneous and whether its conclusions of law are correct. *Id.* "Lower court findings of fact are clearly erroneous only if not supported by substantial evidence, the court misapprehended the effect of the evidence, or, upon [this Court's] independent record review, [this Court is] firmly convinced that the court was otherwise mistaken." *Henderson v. State*, 2024 MT 253, ¶ 10, 418 Mont. 431, 558 P.3d 749.

A court's order declining to conduct a PCR evidentiary hearing is reviewed for abuse of discretion. *Main v. State*, 2024 MT 215, ¶ 14, 418 Mont. 159,

556 P.3d 940. A lower court abuses its discretion if it "acts arbitrarily, without conscientious judgment, or in excess of the bounds of reason, resulting in substantial injustice." *Henderson*, ¶ 10.

SUMMARY OF THE ARGUMENT

Other than Ellison's IAC claims against Jensen, none of the other claims Ellison alleged to the district court are properly before this Court. Ellison has either abandoned those claims and/or failed to advance any legal argument or support. Of the remaining viable claims, Ellison has not met his heavy burden to establish the court's findings were clearly erroneous or that the court's application of *Strickland v. Washington*, 466 U.S. 668 (1984), was incorrect.

All of Ellison's claims depend upon his argument that he suffered from a mental disease/disorder that rendered him unfit to stand trial or assist in his own defense as well as making him unable to form the requisite mental states for the six felonies he committed. However, as the district court correctly found, the record did not support Ellison's mental health arguments and Ellison has not established those findings were erroneous.

Nor has Ellison established that, especially with the absence of any evidence that he suffered from a mental disorder that manifested in substantial disturbances

in ability to conform his behavior or think, Jensen performed deficiently by not insisting on a fitness evaluation or asserting a mental disease/disorder defense.

The court correctly applied the strong presumption that Jensen performed within the wide range of reasonable professional conduct throughout his representation of Ellison. Since Ellison cannot establish that Jensen's performance fell below an objective standard of reasonableness there is no reason to consider whether Jensen's alleged errors created a reasonable probability of a different outcome.

The district court did not abuse its discretion when it determined an evidentiary hearing was not necessary. Given the record from Ellison's criminal proceedings—which included two hearings where Ellison competently testified—and the conclusory and unsupported nature of Ellison's claims, the court did not act arbitrarily when it did not conduct an evidentiary hearing.

ARGUMENT

I. Unpreserved claims and application of procedural bars

Before reaching the merits of alleged postconviction claims, courts must determine whether the claims are properly raised or procedurally barred. *Hagen v. State*, 1999 MT 8, ¶ 11, 293 Mont. 60, 973 P.2d 233. This Court applies the statutory bar "in order to prevent the abuse of postconviction relief by criminal

defendants who would substitute those proceedings for direct appeal and in order to preserve the integrity of the trial and direct appeal." *Watson v. State*, 2002 MT 329, ¶ 11, 313 Mont. 209, 61 P.3d 759.

On appeal, Ellison argues he was entitled to relief "due to his documented and waived Mental disorder and Traumatic Brain Injury, which the Federal Government has confirmed, causing memory loss, and unreasonable behavior which Ellison can NOT control or remember." (Br. at iv (emphasis in original).) Ellison also alleges he suffered from the inability to differentiate between hallucinations and reality and was unfit to stand trial. (*Id*. at 1.) Ellison continues to blame T.E. for not ordering the right medications and/or not giving him the right amount of medications and accuses T.E. of telling him what to say to law enforcement. (*Id*.)

In his Opening Brief, Ellison lists the following four discrete PCR claims:

1) Mental Disorder, Inability to proceed
2) Ineffective Assistance of Counsel
3) Prosecutorial Misconduct; and
4) Violations of the Americans with Disabilities Act of 1990; inclusive of the Montana Human Rights Act; and the Codes of Federal Regulations, concerning the Mentally Disabled [Veteran].

(Br. at i.)[6]

[6]Ellison has attached several appendices to his Opening Brief. Any of those documents that were not filed with the district court should be disregarded as not part of the record. *State v. Passmore*, 2014 MT 249, ¶ 16, 376 Mont. 334, 334 P.3d 378 (Court will "not consider evidence that is not in the record on appeal").

Absent from these claims is any assertion of an equal protection violation or IAC by Jensen for not investigating his mental health history or an allegation of cruel and unusual punishment. Nor has Ellison advanced any IAC claim against his appellate counsel. Accordingly, Ellison has abandoned those claims, and this Court need not address them. *See Ford v. State*, 2005 MT 151, ¶ 35, 327 Mont. 378, 114 P.3d 244.

Additionally, Ellison has not included any factual or legal arguments related to alleged prosecutorial misconduct or violations of the Americans with Disabilities Act, Montana Human Rights Act, or Federal Regulations. Thus, these claims are also forfeited since this Court will not address unsupported arguments or develop and articulate arguments for parties on appeal. *Herman v. State*, 2006 MT 7, ¶¶ 54-55, 330 Mont. 267, 127 P.3d 422.

Of the remaining claims, the following are procedurally barred because they could have been raised on direct appeal, but were not: allegations that the State and district court failed to seek a fitness evaluation; argument that the court erroneously accepted Ellison's not guilty plea; and the detention center's alleged failure to provide medications so he was unable to assist in his own defense. This Court "will not consider grounds for postconviction relief that reasonably could have been raised on direct appeal." *DeShields v. State*, 2006 MT 58, ¶ 15, 331 Mont. 329, 132 P.3d 540; Mont. Code Ann. § 46-21-105(2); s*ee also*

Peterson v. State, 2017 MT 165, ¶ 21, 388 Mont. 122, 398 P.3d 259 (even if not addressed in order denying PCR, this Court may still affirm the court's order denying relief).

The only remaining grounds properly before this Court are the following alleged IAC claims against Jensen: failing to request a fitness evaluation; not objecting to the PSI because Ellison had not had a fitness evaluation; not presenting a mental disease/disorder defense and not arguing for leniency at sentencing based on Ellison's mental health and allowing Ellison to enter a not guilty plea without reference to his alleged mental disease/disorder.

None of these claims is supported in either law or fact.

II. The district court correctly concluded that Jensen was not ineffective.

"[A] petitioner seeking to reverse a district court's denial of a petition for postconviction relief . . . bears a heavy burden." *Whitlow v. State*, 2008 MT 140, ¶ 21, 343 Mont. 90, 183 P.3d 861. A petitioner must prove by a preponderance of the evidence that he is entitled to relief and present "more than mere conclusory allegations." *Ellenburg v. Chase*, 2004 MT 66, ¶ 16, 320 Mont. 315, 87 P.3d 473.

A PCR petition must "identify all facts supporting the [asserted] grounds for relief . . . and have attached affidavits, records, or other evidence establishing the existence of those facts." Mont. Code Ann. § 46-21-104(1)(c). Such a petition

must also "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). Mere conclusory allegations are insufficient to support a PCR petition. A court may dismiss a petition for PCR 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).

A. The district court's finding—that there was no evidence to support that Ellison was unfit to assist in his own defense or stand trial and unable to form the requisite mental states or appreciate the criminality of his actions—was not clearly erroneous.

In its order denying Ellison's Petition, the court found the alleged mental health records were inadmissible hearsay, absent at least an affidavit or other foundational evidence. (App. B.) The court further found that even if they were taken at face value, none of the records suggested Ellison "was unfit to stand trial or that he could not have formed the necessary criminal mental state." (*Id*. at 4.) Since most of the records Ellison submitted were from 2012 to 2017, nearly all of them were irrelevant to whether he was competent to stand trial. (*Id*.)

The court correctly identified Ralph Beeson's 2018 progress notes as the only potentially relevant records to Ellison's claims. (App. B at 5.) The court properly noted, however, that not only were those notes based entirely on Ellison's subjective self-reports (as all the records were), but none of those records remotely suggested Beeson was even familiar with, or purporting to apply, either Mont.

Code Ann. § 46-14-102 (lacking mental state due to mental disease or defect) or Mont. Code Ann. § 46-14-103 (legal test for fitness to proceed). (*Id*. at 5.)

The standard for considering a defendant's mental condition begins with Mont. Code Ann. § 46-14-101(1), which applies to consideration of "a defendant's fitness to proceed and stand trial; whether the defendant had, at the time that the offense was committed, a particular state of mind that is an essential element of the offense" and at sentencing if the defendant claims he had been "unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of the law."

Under Mont. Code Ann. § 46-14-101(2) (a), "mental disease or disorder" refers to "an organic, mental, or emotional disorder that is manifested by a *substantial disturbance* in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation." (Emphasis added.) Nothing in the record, including the mental health records submitted by Ellison, remotely suggests that either Ellison's PTSD or TBI was "manifested by a substantial disturbance in behavior."

The court's finding that Ellison's mental health claims lacked any factual or legal support was not clearly erroneous. *Henderson*, ¶ 10. The district court did not misapprehend the effect of the documentation Ellison submitted and the court's finding that Ellison's claims lacked any compelling evidence was supported by

substantial evidence. Even when independently reviewed, Ellison's documentation could not firmly convince this Court that the district court was mistaken.

Finally, it is important to note that on appeal, Ellison focuses solely on his history of TBI and fails to even mention his PTSD history. (Br.) Yet, in his arguments to the district court, Ellison alleged his mental health issues stemmed mainly from PTSD and that he was not given the proper medications by his wife and detention staff. This change in theory is significant. *See State v. Wetzel*, 2005 MT 154, ¶ 13, 327 Mont. 413, 114 P.3d 269 (cannot change theories on appeal); *Sanders v. State*, 2004 MT 374, ¶ 14, 325 Mont. 59, 103 P.3d 1053 (cannot expand claims); *Herman*, ¶¶ 54-55 (Court will not review issues that were not presented to the district court).

Nevertheless, even if both of Ellison's alleged mental health conditions are considered, the record does not establish that either Ellison's PTSD diagnosis or TBI met the definition of a mental disease/disorder rendering him noncapable or forming the mental states of the six felonies he committed over several years while he was simultaneously getting his second college degree. The record also lacks any credible evidence that either his TBI or PTSD diagnosis rendered Ellison unfit for trial and unable to assist in his own defense.

B. Jensen's performance was not deficient

Ellison's IAC claims on appeal all revolve around his alleged mental disease/disorder. Given the lack of evidence establishing that Ellison suffered from a substantial mental disease/disorder at the time of his offenses or during the trial proceedings, Ellison's IAC claims cannot be sustained. Nor can they be sustained even if it is presumed that Ellison suffered from a mental disease/disorder. The record lacks any credible evidence that Ellison was unable to assist in his own defense or that his mental condition prevented him from forming the requisite mental states for the offenses or appreciate the criminality of his actions. Accordingly, Jensen's alleged failure to act in relation to Ellison's claimed mental health condition was not deficient performance.

In assessing IAC claims, this Court applies the two-pronged test set forth in *Strickland*. *Whitlow*, ¶ 10. Petitioners must demonstrate by a preponderance of the evidence that their counsels' performance was deficient and that as a result, they suffered prejudice. *Oliphant*, ¶ 38. If an IAC claim can be disposed of for lack of evidence on one *Strickland* prong, the other prong need not be addressed. *Whitlow*, ¶ 11.

An attorney's performance was deficient if their "conduct fell below an objective standard of reasonableness measured under prevailing professional norms and in light of the surrounding circumstances." *Whitlow*, ¶ 20. There is "a

strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," and the defendant "must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Strickland*, 466 U.S. at 689. The petitioner bears a "heavy" burden to overcome this presumption, *Strickland*, 466 U.S. at 713, and "every effort must be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time," *Whitlow*, ¶ 15.

To establish *Strickland*'s second prong, prejudice, the defendant must demonstrate a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687. When considering this prong, the court must consider the totality of the evidence. *Strickland*, 466 U.S. at 695. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

1. Fitness to proceed/assist with defense

As Jensen explained in his affidavit and as supported by the lack of evidence in the record, Jensen had no reason to request that Ellison's fitness be evaluated or assert the same at sentencing. Jensen stated that Ellison was able to assist in his own defense, knew what Jensen's role was, and understood the legal process. (DC-Doc. 22.) Ellison consistently told Jensen that the children would recant their

statements and not testify against him. (*Id*.) Jensen reported that "[a]t no time did [Ellison] appear unable to comprehend the world around him," or "express an opinion that made it appear that he did not understand the legal proceedings against him." (*Id*.)

A defendant must be competent to stand trial under due process protections and Mont. Code Ann. § 46-14-103. *See, e.g., Drope v. Missouri*, 420 U.S. 162, 171–72 (1975). "The standard for determining whether an accused is competent to stand trial is 'whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.'" *State v. Garner*, 2001 MT 222, ¶ 21, 306 Mont. 462, 36 P.3d 346 (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)). There are "'no fixed or immutable signs which invariably indicate the need for further inquiry,' as inquiry into an accused's competency is necessarily based on the individual circumstances presented." *Id*. Indicia of possible incompetency includes the defendant's demeanor in court, evidence of the defendant's acting irrationally, prior medical opinion of incompetency, the nature of the crime, and alleged defense of mental instability. *Garner*, ¶ 23; *State v. Bostwick*, 1999 MT 237, ¶ 18, 296 Mont. 149, 988 P.2d 765.

None of these indicia appear in the record here. Ellison's testimony during the two evidentiary hearings demonstrated he fully understood the proceedings and

his responses were competent and appropriate. There was no evidence in the trial record that Ellison acted irrationally or erratically. Moreover, and relevant to Ellison's allegations, this Court has held that a defendant's use or access to mental health medications does not necessitate inquiry into the defendant's competency. *See Garner*, ¶ 23. Most compelling is that Jensen had not observed any indications that Ellison was unable to understand the proceedings and assist in his own defense. Jensen acted well-within the "prevailing professional norms and in light of the surrounding circumstances" by not requesting a fitness evaluation. *Whitlow*, ¶ 20.

The same is true for Jensen's representation of Ellison at sentencing. Contrary to Ellison's argument, Jensen had no basis upon which to object to the PSI based on Ellison's alleged lack of fitness. Defense counsel is not obligated "to raise every non-frivolous issue" in a client's defense. *Miller v. State*, 2012 MT 131, ¶ 14, 365 Mont. 264, 280 P.3d 272. Jensen filed a sentencing memorandum pointing out inaccuracies in the PSI and arguing to the court that Ellison's mental and physical health conditions supported a lenient sentence.

Ellison has not met his burden to establish Jensen performed deficiently based on Ellison's alleged lack of fitness. Since Ellison failed to establish the first *Strickland* prong, this Court need not address the prejudice prong. *See Whitlow*, ¶ 11.

2. Mental disease or defect defense

Ellison has not established that Jensen performed deficiently by not asserting a mental disease or defect defense or allowing Ellison to plead not guilty without reference to the same. A petitioner does not prove ineffective assistance simply because counsel did not pursue a particular defense if the defense had no merit or factual basis. *State v. Mahoney*, 264 Mont. 89, 101, 870 P.2d 65, 73 (1994) (held, when no evidence existed to support mental disease/defect defense, counsel did not perform deficiently by not asserting the defense). As the district court correctly found:

> Mr. Ellison assumes, but does not prove, that a person who has PTSD is automatically unfit to proceed. Alternatively, he assumes but does not prove that having PTSD automatically precludes being able to form the necessary mental state to commit a crime and subsequently be criminally accountable for it. But his chart notes do not say this or even fairly suggest it.
>
> . . . .
>
> [The record] fall[s] well short of showing now that Mr. Ellison was unfit then or that he had a viable mental state defense.

(App. B at 5, 6.) Likewise, Ellison's mental health records do not establish that his TBI precluded Ellison from having "a particular state of mind that is an element of the offense charged" or "appreciate the criminality of [his] behavior or to conform [his] behavior to the requirement of the law." Mont. Code Ann. § 46-14-206(1)(d), (e).

As Jensen explained, Ellison maintained he did not commit the offenses so there was no means through which to assert a mental disease/disorder defense or claim an inability to appreciate the criminality of his actions relative to sentencing. (DC-Doc. 22.) The record, including Ellison's initial appearance and three arraignments, supports Jensen's affidavit. Jensen knew Ellison was taking medications for PTSD, but in his interactions with counsel, Ellison never told him or even insinuated that he had committed the offenses, or had done so because of a mental disease/disorder. Jensen did not perform deficiently by not pursuing a meritless strategy or one with an unlikely chance of success based upon the exercise of reasonable judgment. *State v, Hauer*, 2012 MT 120, ¶ 47, 365 Mont. 184, 279 P.3d 149.

Jensen was not obligated to raise meritless defenses or assert unsupported arguments at sentencing. Nor did Jensen perform deficiently by "allowing" Ellison to plead not guilty by reason of mental disease/disorder. Not only is there no evidence that Ellison was suffering from such a mental health condition, but such a plea is not permitted under Mont. Code Ann. § 46-12-204(1).

This Court "accords great deference to [c]ounsel's exercise of judgment in determining appropriate defenses and trial strategy." *Oliphant*, ¶ 43. Indeed, the *Strickland* standard is not whether counsel did everything the defendant wanted, but rather whether trial "counsel's representation fell below an objective standard

of reasonableness." *Strickland*, 466 U.S. at 687-88. Since Ellison failed to establish that Jensen performed deficiently, this Court need not address the second *Strickland* prong relative to his claim that his mental health prevented him from forming the required mental states or would have supported a different outcome at sentencing. *Whitlow*, ¶ 11.

The records submitted by Ellison did not support his conclusory allegations about his mental health. Nor did those records overcome Jensen's explanations for his actions and the absence of evidence that Ellison suffered from a mental disease/disorder that manifested in substantial behaviors. Thus, Ellison failed to meet his "heavy burden" to reverse the court's order denying PCR. *Whitlow*, ¶ 21.

III. The district court did not abuse its discretion by denying Ellison's Petition without conducting a hearing.

Ellison does not argue on appeal that the court abused its discretion by denying his Petition without conducting an evidentiary hearing. This Court will not address unsupported arguments or develop and articulate arguments for parties on appeal. *Herman*, ¶¶ 54-55. Nevertheless, the record supports that the district court did not act arbitrarily or with conscious disregard when it determined a hearing was unnecessary.

The postconviction provisions are not designed as a means for fact-gathering. Rather, a defendant is expected to present sufficient facts, not mere conjecture, to

the court. Mont. Code Ann. §§ 46-21-104(1)(c), -104(2). Unsupported allegations are insufficient to entitle a petitioner to a hearing. *State v. Finley*, 2002 MT 288, ¶ 9, 312 Mont. 493, 59 P.3d 1132. "Not all circumstances require the district court to hold an evidentiary hearing on a petition for post-conviction relief." *Heath v. State*, 2009 MT 7, ¶ 21, 348 Mont. 361, 202 P.3d 118. The appropriate inquiry regarding the sufficiency of a PCR petition turns on whether the evidence and supporting attachments provide the necessary facts to establish the claims. *Herman*, ¶ 17; *Heath,* ¶ 27 (PCR provisions do not permit petitioners to "conduct a 'fishing expedition' in an attempt to establish the right to an evidentiary hearing").

Here, the criminal record and PCR pleadings contained ample information and evidence to rule on the merits of Ellison's claims. Nothing in the record establishes that additional proceedings were necessary and this Court does not need information beyond the record to address his claims. Mont. Code Ann. § 46-21-201(1)(a); *Hamilton*, ¶ 11. The court did not abuse its discretion when it dismissed Ellison's Petition absent an evidentiary hearing. *Main*, ¶ 14.

CONCLUSION

This Court should affirm the district court's order denying Ellison's Petition.

Respectfully submitted this 22nd day of September, 2025.

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By: */s/ Katie F. Schulz*
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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 9,262 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Katie F. Schulz
KATIE F. SCHULZ

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0172

SCOTT WAYNE ELLISON,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPENDIX

Relevant postconviction relief documents list ..... App. A

Order Denying PCR Petition, Cascade County Cause No. CDV-23-064, dated 12/16/24 ..... App. B

CERTIFICATE OF SERVICE

I, Kathryn Fey Schulz, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-22-2025:

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