

In the Supreme Court of the State of Montana

Supreme Court No. DA 25-0114

RICHARD PATTERSON,

Petitioner and Appellant,

-vs-

STATE OF MONTANA,

Respondent and Appellee.

Appellant's Opening Brief

On Appeal from the Montana Sixteenth Judicial District Court,
Custer County, Hon. Nickolas C. Murnion, Presiding

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Statement of the Case

Patterson's appeal is a combination of denials by the district court of petitions for postconviction relief. In addition to these appeals, Patterson also has a pending petition for habeas corpus relief pursuant to *28 U.S.C. § 2254* before the United States District Court, District of Montana. *Patterson v. James Salmonsen; Attorney General of the State of Montana*, Cause No. CV 23-84-BLG-DWM. Patterson is acting *pro se* in federal court. That matter is stayed and being held in abeyance pending resolution and exhaustion of Patterson's claims before this Court. (Dkt. 34, CV 23-84-BLG-DWM). There is much overlap between this appeal and the claims raised in the federal habeas case.

There is also significant overlap between the claims Patterson raised on both federal habeas and on PCR and his direct appeal from the underlying criminal conviction, *State v. Patterson*, 2012 MT 282, 367 Mont. 186, 91 P.2d 556, especially pertaining to the DNA claims.

Patterson's original *pro se* PCR petition was filed on July 17, 2017. The State responded and moved to dismiss on August 30, 2017.

Patterson filed a reply brief in opposition. That reply also included a number of new claims, which were not raised in the original petition. Patterson eventually filed an amended petition on November 2, 2017, and then a revised amended petition on December 22, 2017.

The district court denied all of the claims in Patterson's revised amended petition except a claim alleging *Brady* violations. On this last surviving claim, the court set an evidentiary hearing. The court also appointed Penelope Strong as counsel for Patterson.

Ms. Strong then moved the court to file a Second Verified Amended Petition. After a response by the State, the court denied that motion. An evidentiary hearing on Patterson's sole remaining claim was held on August 26, 2022. On October 27, 2022, the court dismissed Patterson's *Brady* claim. (Appendix A & Dkt. 192).

Other than the *Brady* claim, the district court addressed five other claims Patterson raised on PCR: (1) "Extreme deprivation of Patterson's secure and protected constitutional rights by enforcing laws and willfully violating them; (2) prosecutorial misconduct; (3) ineffective assistance of counsel; (4) judicial misconduct, malicious prosecution;

and (5) Court bias and prejudice against Patterson while petitioning the court for postconviction relief.” (Dkt. 41 pg. 4). Each was denied.

In a separate proceeding, DV 2022-19, Patterson filed a *pro se* Petition for DNA Testing pursuant to *Mont. Code Ann. § 46-21-110(1)*. Ms. Strong was also appointed to represent Patterson in this matter. The district court denied this petition without a hearing on April 19, 2023. (Appendix A).

Now, in this combined appeal, Patterson respectfully moves this Court to conclude the district court erred in denying his petitions for postconviction relief thereby vacating his underlying conviction and ordering a new trial.

Statement of the Issues

The district court erred in denying each of Patterson’s claims raised on postconviction relief.

The district court also erred when it deprived Patterson of his ability to conduct DNA testing pursuant to *Mont. Code Ann. § 46-21-110*.

Summary of the Arguments

The district court abused its discretion when it denied the following claims without a hearing: (1) “Extreme deprivation of Patterson’s secure and protected constitutional rights by enforcing laws and willfully violating them; (2) prosecutorial misconduct; (3) ineffective assistance of counsel; (4) judicial misconduct, malicious prosecution; and (5) overt bias and prejudice against Patterson while petitioning the court for postconviction relief.”

As to Patterson’s *Brady* claim, the district court made erroneous factual findings and legal conclusions.

Finally, *de novo* review by this Court will reveal the district court erred both in concluding Patterson failed to satisfy the criteria of *Mont. Code Ann. § 46-21-110(5)* and in deciding the issue without first conducting a hearing at which Patterson’s DNA expert could testify.

Statement of Facts

The State charged Patterson with three counts of Sexual Intercourse Without Consent, one count of felony Sexual Assault, and one count of Attempted Sexual Assault (a felony) on June 17, 2010. Count I of the charging document alleged that Patterson committed

sexual intercourse against A.K. on October 18, 2009. At the time, A.K. was eleven years old.

Count II alleged the same offense but drastically different conduct. According to the State, on May 17, 2020, Patterson engaged in sexual intercourse with T.P., an adult woman, without her consent.

Count III made similar allegations but these involved J.L., also an adult woman, and were alleged to have occurred sometime in May 2006.

Count IV alleged that in March 2026, Patterson committed felony sexual assault against K.W., also an eleven-year-old girl. K.W. was also the alleged victim in Count V, which was alleged to have occurred after the conduct giving rise to Count 4. Count 5, however, alleged that Patterson's sexual assault was an attempt and not a completed act.

In the underlying criminal case and its subsequent appeal, DNA evidence on clothing worn by A.K. on the day of the alleged incident featured predominantly. Specifically, testing on the clothing by the Montana State Crime Lab revealed a semen stain on A.K.'s shirt. DNA testing of the stain excluded Patterson as a contributor of the stain, meaning that some unknown male at some time on October 18, 2009 or

before had deposited semen on A.K.'s shirt and that person was not Patterson. The state successfully moved the district court to suppress any mention of the semen stain on A.K.'s shirt at trial. *State v. Patterson*, 2012 MT 282, ¶¶ 5-6, 367 Mont. 186, 291 P.3d 556. The trial court's decision, grounded on Montana's Rape Shield law, was later upheld by this Court on appeal.

The case was charged and tried to a jury in Custer County. Count 5, attempted sexual assault of K.W., was dismissed by the trial court at the end of the State's case for insufficient evidence. *Id.* at ¶ 7. Patterson was also acquitted of Count 2, sexual intercourse with T.P., but Patterson was ultimately convicted of two counts of Sexual Intercourse Without Consent and one count of felony Sexual Assault. *Id.* at ¶¶ 1 & 8. "At the sentencing hearing, the court sentenced Patterson to concurrent Montana State Prison sentences of one hundred years on Count I¹, fifty years on Count III², and one hundred years on Count IV³." *Patterson*, ¶ 8.

¹A.K.

²J.L.

³K.W.

On direct appeal to this Court, Patterson was represented by Matthew Wald. Mr. Wald was also Patterson's trial counsel. Mr. Wald raised two questions on appeal. First, whether the trial court's application of the rape shield statute violated Patterson's rights to a fair trial under the Montana and United States constitutions. Second, whether the trial court erred in denying Patterson's motions to dismiss Count I and Count IV when the State failed to prove venue. Each claim was denied, and this Court affirmed Patterson's conviction on December 11, 2012. *Id.*, ¶ 26. Patterson did not file a petition for a writ of certiorari to the United States Supreme Court.

After some litigation regarding equitable tolling, Patterson began to make timely postconviction filings pursuant to Title 46, Chapter 21. Postconviction relief is difficult for even the most skilled attorney, and because Patterson was acting *pro se* with no legal training, he ended up filing a number of petitions and amended petitions. Further, Patterson's postconviction filings created two separate cases. First, DV 2017-68, is Patterson's underlying petition for postconviction relief. This petition included a number of claims including reference to the

DNA issues he wished to litigate⁴. A second case, DV 2022-19, is a petition for DNA testing pursuant to *Mont. Code Ann. § 46-21-110*⁵.

Although unconventional, for convenience, the relevant briefing, response, summary of claims and filing dates in both cases are set forth chronologically below:

1. Original Petition for Postconviction Relief (DV 2017-68).
 - a. Filed *pro se* on July 17, 2017,
 - b. Claims:
 - i. Prosecutorial Misconduct
 - (1) indirect implication that Patterson's semen was on A.K.'s shirt despite him having been excluded as a contributor of the stain, and
 - ii. Ineffective Assistance of Trial Counsel
 - (1) lack of objection to DNA expert testimony that he tested the stain on A.K.'s shirt coupled with the introduction of the shirt by the prosecution;
 - (2) Mr. Wald failed to object when prosecution indirectly implied that Patterson was the source of the stain on A.K.'s shirt
2. State's Motion to Dismiss and Response
 - a. Filed August 30, 2017.
3. Patterson's reply/response briefs
 - a. Filed September 18, 2017.
 - b. In addition to prior claims, Patterson raised a *Brady* claim that the prosecution and/or police investigators withheld

⁴Hereafter referred to as PCR case.

⁵Hereafter referred to as the DNA case

impeachment or exculpatory evidence material to Patterson's guilt.

4. State's Motion for Scheduling Deadline and Briefing Schedule for Amended Petition.
 - a. Filed October 20, 2017.
 - b. This motion is granted on October 20, 2017.
5. Patterson's Reply to State's Motion.
 - a. Filed October 27, 2017.
6. Patterson's Reply & Motion to Deny State's Motion for Scheduling Deadline for "Amended Petition."
 - a. The document lacks a file stamp but was signed by Patterson on October 25, 2017.
7. Patterson's "Amended Petition' for Second Briefing Schedule and Patterson's formal Complaint of Court Prejudice against Patterson and Showing Favor for the Attorney Generals [*sic*] Office.
 - a. Filed November 2, 2017.
 - b. This document also alleges a number of claims that appear to be amended postconviction claims.
 - i. Prosecutorial Misconduct;
 - ii. *Brady* Violation;
 - iii. Ineffective Assistance of Counsel;
 - iv. Judicial Misconduct; and
 - v. Court Bias and Prejudice Against Patterson While Petitioning the Court for Postconviction Relief;
8. Recusal Order by prior district court judge.
 - a. Filed November 3, 2017.
9. "Patterson Accepts Judge Hayworth's Recusal & Order Calling in Judge & Requests that the Court Respond to Pattersons' Last Response to Amended petition or to Hold the State in Contempt & Rescind the Order to Amend & to Give Summary Judgment in

- Patterson's Favor.”
- a. Filed November 13, 2017.
10. “Patterson’s ‘Revised’ Amended Petition for Postconviction Relief with Affidavit in Support for Brady Claim from Savannah Tailleux (Nelson).”
 - a. Filed December 22, 2017
 - b. This document alleges:
 - i. Deprivation of Constitutional Rights
 - ii. Prosecutorial Misconduct
 - iii. Ineffective Assistance of Counsel
 - iv. Judicial & Malicious Prosecution
 - v. Court Bias During Postconviction Proceedings
 - vi. *Brady* Violation.
 11. State’s “Motion to Dismiss for Failure to State a Claim in Petitioner’s ‘Revised’ Amended petition for Postconviction Relief with Affidavit in Support.”
 - a. Filed February 2, 2018.
 - b. The State also responds to the merits of Patterson’s claims.
 12. Patterson’s “Reply to State’s Motion to Dismiss for Failure to State a Claims, & Motion for Finale [*sic*] Ruling on petition for Postconviction Relief in Petitioners [*sic*] Favor.”
 - a. Filed February 20, 2018.
 13. State’s Motion for Hearing Limited to Alleged *Brady* Issue.
 - a. Filed April 12 but dated March 30, 2018.
 - b. This document appears at Dkt. 24 but is listed chronologically in this Outline.
 14. Patterson’s “Motion to Deny State’s Motion for Hearing Limited to Alleged Brady Issue.”
 - a. Filed April 9, 2018. (Dkt. 22).
 15. Court Orders Hearing on “limited alleged *Brady* issue.”

- a. April 12, 2018.
 - b. Court also orders “there were will be no further amendments or briefing.” (DV-2017-68; Dkt. 23).
16. Patterson moves for appointed counsel.
 - a. April 20, 2018.
 - b. Dkt. 26
17. Order Appointing Counsel
 - a. April 25, 2018
 - b. Dkt. 27.1
18. Patterson files *pro se* “Motion to the Court to Order the State to Submit Admissible Evidence to the Court that Proves the Same Facts as that of the Inadmissible Evidence Used Against Patterson at Trial.”
 - a. May 21, 2018
19. State’s Motion to Strike Petitioner’s *Pro Se* Motion to Order the State to Submit Admissible Evidence.
 - a. June 4, 2018
20. Ms. Strong appears as counsel in place of previously-appointed public defender.
 - a. June 11, 2018.
21. Patterson’s *pro se* Motion for the Court to Rule on Patterson’s Prior Motion to Order the State to Submit Admissible Evidence to the Court Dated May 16, 2018.
22. Court’s Order Regarding Motion to Order State to Submit Admissible Evidence and Motion for Court to Rule
 - a. June 28, 2018
 - b. Denied.
23. Memorandum and Order Regarding Petition for Postconviction

Relief

- a. Appendix B – Denying all claims except *Brady* claim
24. Ms. Strong’s Motion for Leave to File Second Verified Amended Petition for Postconviction Relief and Brief in Support.
- a. August 20, 2012
 - b. Dkt. 137
 - c. Includes claim of “newly discovered exculpatory evidence and the relevant and applicable case law, regarding the admissibility of rape shield evidence under the relevant statute has significantly changed, and is apt precedent for further relief in Petitioner’s case.
 - d. Generally alleges four categories of relief:
 - i. newly discovered evidence,
 - ii. suppression of exculpatory evidence
 - iii. ineffective assistance of counsel
 - iv. “a new body of important case law that supports further relief.”
 - (1) Dkt. 137 at 3.
25. State’s Response to Petitioner’s Motion for Leave to File Second Verified Amended Petition for Postconviction Relief
- a. Filed November 26, 2021.
 - b. Dkt. 144
26. Patterson’s Reply to State’s Response.
- a. Filed January 2, 2022.
27. Order Denying Motion for Leave to File Second Verified Amended Petition for Postconviction Relief
- a. Filed January 6, 2022
 - b. “All of the issues presented in the proposed second amended petition are issues which have been either decided on direct appeal or concern evidence that would still not be admissible or have any bearing on whether Patterson was innocent of the crimes for which he was convicted.”

i. Dkt. 152 at 6

28. Patterson's *Pro Se* Petition for DNA testing pursuant to *Mont. Code Ann. § 46-21-110*
 - a. Filed February 25, 2022
 - b. New cause number DV 2022-19
29. Counsel appointed for DNA petition.
 - a. March 21, 2022.
30. *Pro Se* Motion to Compel A Court Order in DNA case
 - a. Filed April 18, 2022.
31. Ms. Strong appears as counsel in DNA case
 - a. April 22, 2022.
32. State's Response to Patterson's petition for DNA testing.
 - a. August 15, 2022.
33. Hearing on *Brady* Issue in PCR case
 - a. August 26, 2022.
34. Order Denying *Brady* claim in PCR case
 - a. October 27, 2022
 - b. Appendix C
35. Amended Petition for DNA Testing in DNA case
 - a. December 15, 2022 filed by Ms. Strong.
36. Affidavit in Support of Amended Petition for DNA Testing
 - a. Patterson's proposed DNA Expert, Greg Hampikian, Ph.D.
 - b. December 16, 2022.
37. State's Response to Petitioner's Amended Petition for DNA Testing
 - a. February 27, 2023

- b. Filed under seal (erroneously bearing Cause No. DV-12-093)
38. Petitioner’s Reply to State’s Response to Amended Motion
- a. April 7, 2023.
 - b. DV 2022-19, Dkt. 36.
39. Amended Affidavit in Support of Amended Petition for DNA Testing
- a. Greg Hampikian, Ph.D.
 - b. April 12, 2023.
40. Memorandum and Order Regarding Amended Petition for DNA Testing.
- a. April 19, 2023
 - b. Denied without a hearing.
 - c. “The issue of the source of the DNA on A.K.’s clothing has been extensively litigated by the Court and the Montana Supreme Court. Each Court has found that there is no probative value in identifying the DNA stain on A.K.’s clothing as being from a male other than Patterson because the stain does not reveal how or when it got there.”
 - i. Cause No. DV 2022-19; Dkt. 38 at 6-7; Appendix A

The only substantive hearing held on any of Patterson’s postconviction filings was the hearing on the alleged *Brady* violation. That hearing occurred on August 26, 2022. The general claim was that the State, specifically the prosecuting attorney in the underlying criminal trial, Catherine Truman, and an investigating officer, Mark Reddick, had withheld from the defense a statement by Patterson’s

daughter, Savannah Rost.⁶ As characterized by the district court, Ms. Rost “told Officer Mark Reddick and trial prosecutor Catherine Truman in a meeting before the trial that A.K. told [Ms. Rost] that [A.K.] had been sexually abused by [A.K.’s] father on the same day A.K. said Patterson sexually assaulted her (the same incident in which the Defendant was convicted).” (Appendix C at 3).

At the hearing, the court heard testimony from Ms. Rost, Mark Reddick, Patterson, Daniel Baker, and Catherine Truman. Before the substance of the claim was addressed, however, the parties disputed the admissibility of HR records relating to alleged misconduct by Mark Reddick that was uncovered after Patterson’s trial. The misconduct was of such significance that the Department of Criminal Investigation had investigated Mr. Reddick’s on-the-job conduct. (Hrg. Tr. 7-9).

Additionally, as early as November 1998, years before the criminal allegations against Patterson or Officer Reddick’s involvement in his prosecution, Officer Reddick had a pending proceeding before the Police Commission for the City of Miles City. Apparently, Officer Reddick had

⁶aka Savannah Taullier, aka Savannah Nelson.

been terminated by the City for conduct unbecoming an officer and violating *Mont. Code Ann. § 45-8-213* by surreptitiously recording a conversation with the Mayor. (DV 17-68, Hrg. Ex. 9). However, subject to a settlement agreement, he was reinstated to the Miles City Police force. Representing Officer Reddick was Matthew J. Wald, who would later represent Patterson at trial on appeal. At Patterson's trial, then-Sergeant Reddick, was still "a police officer for the Miles City Police Department" and had been so since July 1991." (DC 10-38, Trial Tr. at 622).

At the criminal trial, Sgt. Reddick testified he had met and interviewed Patterson regarding allegations made by T.P. (Count II). During at least two points in the trial testimony in the criminal trial, Sgt. Reddick described his question-and-answer session with Patterson as Sgt. Reddick trying to "validate" everything Patterson was telling him. (DC 10-38, Trial Tr. at 631 & 633). Sgt. Reddick also gave testimony regarding K.W.'s allegation and his interview of her. (Id. at 661). On cross-examination, Mr. Wald challenged memory of his investigation thereby challenging his credibility. (Id. at 672-673). Mr.

Wald also challenged Sgt. Reddick's competency and inability to secure a crime scene. (Id. at 676). There is no evidence in the record before this Court on this proceeding, nor does there appear to be in any prior proceeding to the effect of whether Patterson was advised by Mr. Wald that he had previously represented Sgt. Reddick in professional disciplinary proceedings. Consequently, any argument suggesting Patterson's trial and appellate counsel suffered a conflict of interest cannot be raised on appeal here. Nor could it have been raised on direct appeal in the criminal proceedings as Mr. Wald acted as appellate counsel as well.⁷

For her part, Ms. Strong appears to have not addressed the conflict issue beyond referencing that it was "concerning." (Hrg. Tr. at 106).

Ms. Strong argued the material involving a criminal investigation

⁷Absent any indication to the contrary or further development of a factual record, the undersigned is making no suggestion that Mr. Wald's representation of Patterson was compromised by his prior representation of Sgt. Reddick. If Patterson has raised this issue in his federal habeas filings, the undersigned is not aware of it. He did raise a fleeting reference to IAC based on a conflict of interest early in his pleadings, but the issue was not developed or resolved during the postconviction process. (Dkt. 3 at 11-12).

into Mr. Reddick was relevant to both Mr. Reddick's credibility and perhaps a "pattern of conduct" that resulted in him not committing to writing the "exculpatory statements" Ms. Rost made to him. (Hrg. Tr. at 9). Further discussion of this issue will be raised below.

Ms. Rost, Patterson's daughter, was the first witness to testify at the *Brady* hearing. In the fall of 2009, during the time A.K. alleged Patterson engaged in unlawful sexual intercourse with her, Ms. Rost was 13 and living with her father in Miles City. (Hrg. Tr. at 23). A.K. and Ms. Rost were friends and would spend time at each others' homes. The night of the alleged assault, Ms. Rost was to spend the night at K.W.'s house. Neither A.K. nor Ms. Rost wanted to stay at A.K.'s house because there was an older, "creepy looking guy" there. (Hrg. Tr. at 26). At the hearing, Ms. Rost did not recall if A.K. was related to this older, "creepy looking guy." Although Ms. Rost did not recall A.K.'s exact words, Ms. Rost's distinct impression was that A.K. did not want to be home. (Hrg. Tr. at 27).

During this time, Mark Reddick was a school resource officer assigned to Ms. Rost's school. She recalls meeting him first "in like

second grade.” (Hrg. Tr. at 30). After the charges were filed against Patterson, Ms. Rost recalled an interview Mr. Reddick had with her. Mr. Rost testified the interview was in the Custer County Courthouse⁸ and another individual identified by Ms. Rost as “Julie Kurtzfeld Jones⁹.” Ms. Rost was clear the interview occurred before her father’s jury trial.

Ms. Rost recalled that Mr. Reddick inquired if her father “had touched [her] sexually,” and that he asked the question “quite a few times[.]” (Hrg. Tr. at 32). These questions made her angry and she denied that her father had ever sexually abused her. (Hrg. Tr. 44). She did, however, “remember talking to Officer Reddick about being sexually assaulted by two individuals[.]” (Hrg. Tr. 45).

At the age of 14, Ms. Rost felt the interview “took forever.” (Hrg. Tr. at 33). She did not recall at the hearing whether Mr. Reddick asked

⁸Later on cross-examination by the State, Ms. Rost conceded it “could have been in a different building.” (Hrg. Tr. 44).

⁹Later, on cross-examination by the State, it was suggested to Ms. Rost that the prosecutor present was Catherine Truman. Ms. Rost reiterated the only attorney she recalled talking to was Ms. Jones. (Hrg. Tr. at 42).

her any questions about A.K. (Hrg. Tr. 32-33). She did speculate that she “probably gave him my opinions on A.K.” (Hrg. Tr. at 33). That included that A.K. had told Ms. Rost “of abuse going on at home.” “I assume that she was . . . abused by the man that was at her house that night.” (Id.). Ms. Rost was clear that A.K. had told her about the abuse before Patterson was charged. (Hrg. Tr. at 34).

Although Ms. Rost did not recall telling Mr. Wald about A.K.’s statements to her, she was certain she told “anyone who would listen in high school.” (Hrg. Tr. at 36). She also believes she would have told anyone in a position of authority. (Id.)

After Patterson was convicted, Ms. Rost went without contacting him for approximately four years. (Hrg. Tr. at 45). Then, in 2015, she wrote him a letter. The letter was introduced at the hearing as State’s Exhibit A and an affidavit was introduced as Exhibit B. In her affidavit, Ms. Rost attested she knew A.K. had been abused by A.K.’s father. Based on what A.K. told her, Ms. Rost believed that A.K. “was actually raped by her father on the alleged night, and her mother wanted to cover it up and decided to blame” Patterson. (Hrg. Ex. B at 2-

3).

At the hearing, Ms. Rost clarified that she “had always assumed that it was [A.K.’s] dad who had assaulted her that night,” but that no one had ever told her that. (Hrg. Tr. at 50). Ms. Rost did, however, maintain that she did not know if she “specifically told any law enforcement officers that [A.K.] was assaulted by her dad but, [she] probably did.”

Of course, the underlying problem for Patterson is that the whole *Brady* issue stems from the allegation that Ms. Rost did, in fact, tell Mr. Reddick that information but Reddick did not take a contemporaneous note of it at the time the 13-year-old Ms. Rost actually told him. She did believe she relayed the information to either Officer Reddick or said it to the prosecutor. (Hrg. Tr. at 59).

Ultimately, Ms. Rost was forced to admit on cross-examination that, in fact, she did not know what happened the night that A.K. was assaulted. (Hrg. Tr. at 51-52). She also testified she recalled typing her affidavit, but did not remember the words she typed. Regardless, the State introduced the affidavit as substantive evidence during the

evidentiary hearing. Ms. Rost also testified she stood by the information included in the letter she wrote to Patterson although she did express uncertainty as to “whether or not [she] for sure told the cops, but she did talk about it to the prosecutor. (Hrg. Tr. at 61-62). From the standpoint of a *Brady* claim, whether Ms. Rost relayed the information to either the “cops” or the prosecutor is irrelevant.

Mr. Reddick was the next witness Ms. Strong called to testify. (Hrg. Tr. at 67). She began her direct examination questioning him on his prior disciplinary issues, including the proceeding in 1998 in which he had been represented by Mr. Wald. (Hrg. Tr. at 69). Mr. Reddick also affirmed he “did most of the interviews of the victims and various witnesses in the” criminal case against Patterson. (Hrg. Tr. at 88).

Under Ms. Strong’s direct examination, Mr. Reddick admitted he did, in fact, meet with Ms. Rost and the prosecutor, “Cathy Truman.” (Hrg. Tr. at 92). According to Mr. Reddick, he went “along as a witness” and it was his understanding that “it wasn’t to go and interview anybody it was to go and see how comfortable [Ms. Rost] was to testify in court.” (Hrg. Tr. at 92). Mr. Reddick confirmed that, during that

interview, Ms. Rost “elaborated that she had been sexually assaulted by two individuals,” and that he “questioned her in regards to those two individuals.” (Id.) Mr. Reddick also confirmed he wrote a report of the interview with Ms. Rost and Catherine Truman. (Hrg. Tr. at 93).

Complicating matters for Mr. Reddick was the fact that, in the course of Patterson’s postconviction proceedings, he had also submitted an affidavit in which he attested that he denied interviewing Ms. Rost. (Id.) Later in his testimony and on re-direct, Mr. Reddick attested he “actually wrote two reports because one of the incidents happened out in the County and it would have been handled by the County Deputy so I did two reports basically starting out the same supplement, uh one was a City incident one was a County incident.” (Hrg. Tr. 112). He affirmed the reports “detailed the outline [of] the discussion [he] had with [Ms. Rost] on that particular day.” (Id.) Mr. Reddick also testified that “[t]here was no discussion whatsoever about A.K. in that meeting with uh, myself, [Ms. Rost] and Cathy Truman.” (Id.)

After Patterson’s trial, Mr. Reddick met with Ms. Rost with her counselor present and interviewed her regarding the abuse she had

disclosed in the prior meeting leading up to Patterson's trial. He affirmed that interview had nothing to do with A.K. (Hrg. Tr. at 113).

After Patterson filed his postconviction petition, and at the instruction of Catherine Truman, Mr. Reddick contacted A.K. to inquire about her statement to Ms. Rost and if she had ever been sexually abused by her own father. A.K. denied her father had ever sexually abused her. (Hrg. Tr. at 118). Ms. Truman also advised Mr. Reddick that A.K.'s father was "in jail in North Dakota" at the time A.K. was making the allegations against Patterson. (Hrg. Tr. at 119). At the hearing, the State introduced Exhibit G, a "self-authenticated certified public record from the North Dakota Corrections and Rehabilitation Department" showing A.K.'s father was incarcerated between July 28, 2009 and May 17, 2010.

In a conversation between Patterson and Ms. Strong that is captured in the hearing transcript, Ms. Strong reminds Patterson that there is a "brother who's a suspect too." (Hrg. Tr. at 120). Presumably, Ms. Strong said this in the context that Ms. Rost had only assumed the individual she saw in the house that night was A.K.'s father.

Patterson was the next witness to testify at the hearing. As a preliminary matter, Patterson affirmed he had no role in preparing either Ms. Rost's letter or her affidavit. He also maintained he had no knowledge that either Ms. Truman or Mr. Reddick had interviewed his daughter in advance of his criminal trial. (Hrg. Tr. at 126). He would later clarify that nothing was given to him (interview, summary, memorandum, etc.) before trial in regards to Mr. Reddick speaking with Ms. Rost. (Hrg. Tr. at 129).

The State then began its half of the postconviction hearing by calling Captain Baker of the Miles City Police Department. Cpt. Baker's testimony pertained to the 2018 complaint to DCI made against Mr. Reddick. Specifically, the complaint Cpt. Baker had made. (Hrg. Tr. at 136-137). Cpt. Baker testified he found "an issue" with Mr. Reddick's work in 2013. (Hrg. Tr. 138). The issue pertained to "discrepancies" "with storing and retention of evidence in ICAC cases." (Id.) He found no evidence, however, that "any evidence was not maintained properly in regards to the case of Mr. Patterson." (Hrg. Tr. at 138-139).

On cross-examination, Cpt. Baker agreed that a summary of an audit he had completed revealed that “former Officer Reddick was intentionally making statements and documents showing he was doing one thing when he was doing another[.]” (Hrg. Tr. at 140). He also affirmed such conduct implies dishonesty on the part of Mr. Reddick. (Hrg. Tr. at 141).

Catherine Truman was the final witness at the postconviction hearing. She described her encounter with Ms. Rost before Patterson’s trial. “It was right before trial, it was trial prep. I came in, asked her a number of questions that I would ask in trial and uh that was it.” (Hrg. Tr. at 147). She also confirmed Mr. Reddick’s presence at the meeting. Ms. Truman did not recall Ms. Rost ever making accusations that A.K. had been sexually assaulted by her father.

During Ms. Strong’s cross examination of Ms. Truman, Ms. Strong asked if Ms. Truman recalled “submitting a memo to a member of the Crime Lab that A.K.’s minor brother was a suspect and possible source of the epithelial cell[.]” Ms. Truman did not recall. (Hrg. Tr. at 157). Although the state objected and Ms. Strong “withdrew” the question,

both the question and answer remain in the record and are relevant to Patterson's argument on appeal that the court erred in denying his petition for DNA testing.

Ultimately, the district court dismissed Patterson's amended petition effectively denying the *Brady* claim. (Appendix C). The court would do the same with Patterson's request for DNA testing. (Appendix A). Now, in this combined case, Patterson appeals all of the district court's decisions.

Standards of Review

"The standard of review of a district court's denial of a petition for postconviction relief is whether substantial evidence supports the findings and conclusions of the district court. In reviewing a district court's denial of postconviction relief, we review a district court's findings of fact to determine if they are clearly erroneous, and the district court's conclusions of law to determine if the court correctly interpreted the law." *State v. Schaff*, 2001 MT 130, ¶ 5, 305 Mont. 427, 28 P.3d 1073.

"We review discretionary rulings in postconviction relief

proceedings, including rulings related to whether to hold an evidentiary hearing, for an abuse of discretion. We review de novo the mixed questions of law and fact presented by claims of ineffective assistance of counsel.” *Lacey v. State*, 2017 MT 18, ¶ 13, 386 Mont. 204, 389 P.3d 233 (internal citation omitted).

In reviewing the district court’s ruling on Patterson’s Petition for DNA testing, this Court should consider the district court’s interpretation of the statute *de novo* and its application of that statute to Patterson’s particular circumstances for correctness. *State v. Felde*, 20121 MT 1, ¶8, 402 Mont. 391, 478 P.3d 825.

Arguments

I. The district court erred in denying each of Patterson’s claims raised on postconviction relief.

The district court denied the lion’s share of Patterson’s postconviction claims based on the briefing and without an evidentiary hearing. The denials are addressed separately but, either individually or collectively, the evidence presented by Patterson warrants reversal of the court’s rulings.

The district court characterized the claims raised by Patterson’s

Revised Amended Petition as follows:

1. Extreme deprivation of Patterson's secure and protected constitutional rights by enforcing laws and willfully violating them;
2. Prosecutorial misconduct;
3. Ineffective assistance of counsel;
4. Judicial Misconduct, malicious prosecution;
5. Court bias and prejudice against Patterson while petitioning the court for postconviction relief;
6. *Brady* violation.

The first five of these claims were dismissed without a hearing. The court's ruling is a mix of procedural bars and merits denials.

The court summarized Patterson's first claim:

Patterson argues that the Montana Rape Shield Law, § 45-5-511(2), MCA, violates Federal Law and the U.S. Constitution. Patterson contends that the State used Montana Rape Shield law to prevent the Defendant from using the victims [*sic*] past sexual conduct at trial and then proceeded to use the same evidence in their case to show behaviors and demeanor.

(Appendix B at 6). The court dismissed Patterson's claim concluding it was procedurally barred because it was "raised or reasonably could have been raised in Patterson's appeal as they are record based."

(Appendix B at 8). In addition to this procedural bar, the court also went on to deny Patterson's claim on the merits.

For Ground One, Patterson argues the State denied him any access to the DNA and claims the Court's application of the rape shield statute denied him 'the right to confront testimony concerning the sexual abusive behavior and demeanor, which is created by the mind due to the abuse.' Patterson does not point to any and the Court finds the State did not present any evidence at trial of an expert's assessment of A.K. and any 'sexual abusive behavior and demeanor' for A.K. that the State then attempted to attribute to the sexual abuse by Patterson. The Court finds Patterson fails to state a claim for relief for Ground One.

(Appendix B at 9).

Although the district court might be forgiven for missing the nuance of Patterson's claim in the flurry of his *pro se* filings, Patterson clearly distinguished the Rape Shield challenge that was raised on appeal from claims he raised in postconviction. On appeal, the issue was properly raised as a challenge to the trial court's ruling and application of the Rape Shield statute. On postconviction, Patterson's Rape Shield claims were raised through the lens of an ineffective assistance of counsel claim, e.g., counsel was ineffective in failing to litigate and address the statute in light of the evidence or, alternatively,

counsel was ineffective in his appellate capacity in addressing the issue. Patterson attempted to make this distinction clear in his Response to the State's Motion to Dismiss & Response to States Attempt to Misdirect the Court. (Dkt. 10 at 3).

As Patterson has established, the State did in fact place the semen DNA at issue at trial, by intentionally teaching the jury how to identify seminal fluid by sight alone, and then held it up to the jury to view. Patterson has mentioned this to his counsel both at trial and when discussing his direct appeal. Patterson's counsel's failure to use this information in his direct appeal, is clearly ineffective assistance of counsel in Patterson's defense.

(Id.) (emphasis in original).

Here, Patterson is clearly raising a claim that his appellate counsel was ineffective. Simple legal logic dictates that a claim of ineffective assistance of appellate counsel cannot be raised on direct appeal. This logic is particularly compelling when appellate counsel was also trial counsel. The issue has best been summarized by the Supreme Court of Arizona.

We have previously noted, however, that it is improper for appellate counsel to argue his own ineffectiveness at trial because the standard for determining whether counsel was reasonably effective is an objective standard which we feel can best be developed by someone other than the person

responsible for that conduct.

State v. Bennett, 213 Ariz. 562, 566, 146 P.3d 63, 67 (AZ 2006) (internal quotations omitted).

Despite Patterson's clear and repeated claims that his trial and appellate counsel were ineffective, neither the State nor the court sought a response from Mr. Wald. Consequently, the mixed questions of fact and law presented by Patterson's claims of ineffective assistance of his trial and appellate counsel remain unaddressed.

Patterson also vehemently asserts Montana's Rape Shield law fails to meet the minimum standards of federal law. Specifically, he would direct this Court to *Rule 412(b)* of the Federal Rules of Evidence. This Rule allows for the discretionary admission of evidence of specific instances of a victim's sexual behavior in federal criminal proceedings. Although *Fed. R. Evid. 412(b)* has no counterpart in the Montana Rules of Evidence, Patterson argued (and continues to argue) that the federal rule and the case law interpreting them is sufficiently persuasive to render Montana's Rape Shield law illegal.¹⁰ While not directly speaking

¹⁰But see, e.g., *Hurtado v. Long*, 2017 U.S. Dist. LEXIS 35672 (C. Dist. Cal., May 26, 2017) ("The Federal Rules of evidence are not 'laws'")

to whether the federal rules should or even can trump a statute enacted by the Montana Legislature, Patterson would argue both this court and the PCR court should have considered *Fed. R. 412(b)* when evaluating the overall credibility of the evidence when considering the balancing test required by the Rape Shield law. *State v. Colburn*, 2016 MT 41, 382 Mont. 223, 366 P.3d 258; *see also State v. Dist. Ct. of the Eighteenth Jud. Dist.*, 2010 MT 263, 358 n.4, 246 P.3d 415 (“cases and treatises discussing these federal rules may be consulted as persuasive authority for purposes of analysis under their Montana counterparts.”) Although *Fed. R. Evid. 412(b)* has no counterpart in the Montana Rules, nothing prohibits either this Court – nor does it prohibit the PCR court – from considering the policy considerations and commentary to *Rule 412(b)* in evaluating Patterson’s Rape Shield claim as well as the balancing necessary under that law and this Court’s jurisprudence.

Therefore, the court erred in denying this aspect of Patterson’s

or ‘rights’ that apply in state court criminal proceedings, and those rules are not binding on a state court, and to the extent that a state court may have ‘violated’ a Federal Rule of Evidence during a state criminal trial, such a violation is not a constitutional or federal-law violation that a federal habeas corpus action is empowered to remedy.”

claim both on procedural grounds and on the merits. Returning to this Court's standard of review, substantial evidence does not support the court's findings and conclusions on the issue given the nature of Patterson's claim. At minimum, if the court was not going to require a response from Mr. Wald, it abused its discretion by failing to hold an evidentiary hearing. "A court abuses its discretion when it acts arbitrarily, without employing conscious judgment, or exceeds the bounds of reason resulting in a substantial injustice." *State v. Sanchez*, 2008 MT 27, ¶ 15, 341 Mont. 240, 117 P.3d 444.

This is especially true given that Patterson raised the specter that Mr. Wald labored under a conflict of interest. Although Patterson's *pro se* pleadings are lean on detail when alleging Mr. Wald's conflict, that specter became more corporeal when it was revealed that Mr. Wald had represented Mr. Reddick on professional disciplinary matters before he represented Patterson in a trial where he ultimately cross-examined his former client.

The court committed the same error relating to Patterson's second claim alleging prosecutorial misconduct. The court's lengthy summary

of this claim appears on page nine of Appendix B. There, the court attempts to address the merits of this claim.¹¹ However, in doing so, the court – perhaps unintentionally – highlights the ineffective assistance claim Patterson was actually arguing. “The [Trial] Court ruled that defense should make a contemporaneous objection . . . at any time the State attempted to present evidence regarding the effect of how the sexual abuse effected the victim. (Hr’g Tr. at 59-60). Patterson has not pointed to any objection defense made regarding evidence of this type, or where the State attempted to present this type of evidence.” (Appendix B at 9). Of course, it is the absence of any objection to that evidence that would constitute the ineffective assistance of trial counsel.

The court’s PCR holding continues:

The trial transcript shows that the State did not present any expert opinion or assessment on either A.K.’s or K.W.’s credibility or their behaviors based on their knowledge of sexual details or emotional or behavioral changes due to Patterson’s sexual abuse *or where defense objected to such* per the [Trial] Court’s ruling and Patterson does not point to any such evidence.

¹¹The court had also determined the claim was procedurally barred for the same reasons as the first claim.

(Id. at 10) (emphasis added). That the trial transcript is silent on defense counsel's objections does not, itself, resolve the issue. Again, part of Patterson's claims were that Mr. Wald was ineffective. Whether that inefficacy occurred at trial or on appeal because Mr. Wald was incapable of recognizing possible deficiencies in his own trial performance, is worthy of exploration on postconviction relief. Postconviction is, in fact, the very place to explore those claims.

The same holds true for the court's resolution of Patterson's third and fourth claims. These claims all involved some allegation that Patterson's counsel was ineffective. The third claim is expressly an IAC claim.

Patterson contends that the State indirectly admitted the semen DNA by teaching the jury how to identify seminal DNA on evidence by the markings that the crime lab places on them. Patterson further argues that his counsel should have pursued the right to use the semen DNA at trial once the prosecution had admitted it which would have created a strong reasonable doubt. Patterson also argues that his counsel could have moved for a mistrial due to the State using and admitting the inadmissible evidence at trial.

(Appendix B at 7). The court dismissed this claim because, according to the court, it had "already been raised or reasonably could have been

raised in Patterson’s appeal as they are record based.” (Id. at 8). The record in the underlying criminal case has been supplemented, however, into the record of this case.

Even if trial counsel had not also acted as appellate counsel, any suggestion that trial counsel’s failure to move for a mistrial is not a viable claim to raise on direct appeal.

‘[A] record which is silent about the reasons for the attorney’s actions or omissions seldom provides sufficient evidence to rebut’ the strong presumption counsel’s conduct falls within the wide range of professional conduct. If [this Court] cannot answer from the record ‘the question ‘why’ counsel did or did not take the actions constituting the alleged ineffective assistance, the claims are better raised by post-conviction relief where the record can be more fully developed unless ‘no plausible justification’ exists for the defense counsel’s actions or omissions.’

State v. Rodriguez, 2012 MT 65, ¶ 31, 403 Mont. 360, 483 P.3d 1080

(internal citations omitted). Nothing in the postconviction record or the record in the underlying criminal case answers the question “why.”

On the merits of Patterson’s claim, the court noted: “Patterson has not proven that evidence was erroneously admitted in this case. First, it is not the State that admits evidence, it is up to the Court. If the defendant wishes to contest the admission of evidence, he must do

so at trial with an appropriate objection.” (Appendix B at 11). Although Patterson’s *pro se* pleadings are not a paradigm of artful drafting, he is clearly expressing a claim that his counsel was ineffective for the very reason that he did not raise an appropriate objection at the appropriate time. The court’s resolution of Patterson’s third claim was error as it leaves the nuance of Patterson’s arguments unanswered and, rather, relies solely on the opinion of the Montana Supreme Court.

As to the fourth claim, Patterson seems to raise this under the umbrella of an ineffective assistance claim, i.e., he is arguing his counsel failed to address the judicial misconduct and malicious prosecution. By conflating these arguments to those already resolved by the Montana Supreme Court in Patterson’s first case, the postconviction court leaves the crux of Patterson’s arguments unaddressed.

Regarding Patterson’s fifth claim, court bias and prejudice against Patterson during postconviction, the court concluded the appointment of counsel is not the norm in postconviction cases and that the prior postconviction judge “set appropriate deadlines within which Patterson

is to submit all of his claims regarding postconviction relief.” (Appendix B at 13) (internal citation omitted). For better or for worse, it is true the appointment of counsel in postconviction proceedings is an exception and not a norm. Now, with that truth in mind, the postconviction court should have extended Patterson, acting *pro se*, a certain amount of latitude when he did not follow the prescribed procedure. *See e.g., State v. Howard*, 282 Mont. 522, 252, 938 P.2d 710, 712 (1997) (“While we of course expect all petitioners to comply with the applicable statutory requirements regarding the form of post-conviction petitions, we recognize that certain petitioners notably those proceeding *pro se*, will request relief via some manner other than the properly verified postconviction petitions. In the interests of justice and judicial economy, this Court occasionally permits such filings to be deemed as petitions for post-conviction relief even if they are not denominated as such.”) This leniency for *pro se* petitioners carries over to the federal courts too. *See Hoffman v. Lindgren*, 81 F.4th 1016, 1021 (9th Cir. 2023) (“There is good reason that we afford leeway to *pro se* parties, who appear without counsel and without the benefit of sophisticated

representation: ‘Presumably unskilled in the law, the *pro se* litigant is far more prone to making errors in pleadings than the person who benefits from the representation of counsel.’”) (citing and quoting *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000)(en banc)).

The record in this case and the outline set forth in the Statement of Facts demonstrates that even the Clerk of Court had difficulty tracking the flurry of filings. For example, Patterson would often respond to a motion by the State before that State’s motion was even docketed in the court record. Patterson repeatedly sought the appointment of counsel to assist him, however. He did so in the beginning of the case (Dkt. 7), he did so in response to the State’s Motion to Dismiss & Response to the State’s Attempt to Misdirect the Court, and in other filings. The State out-right objected to the appointment of counsel citing, as the court eventually did, *Dillard v. State*, 2006 MT 328, 335 Mont. 87, 153 P.3d 575.

Once he obtained counsel, Ms. Strong sought leave to file an Amended Petition. (Dkt. 152 at 2). That motion was denied concluding “[a]ll of the issues presented in the proposed second amended petition

are issues which have either been decided on direct appeal or concern evidence that would still not be admissible or have any bearing on whether Patterson was innocent of the crime for which he was convicted.” (Id. at 6). Given these circumstances and Patterson’s *pro se* status, the district court erred in denying Patterson’s fifth claim without an evidentiary hearing.

The court’s resolution of Patterson’s sixth non-*Brady* claim without a hearing is problematic given the information that was discovered regarding Mr. Wald’s prior representation of Cpt. Reddick and subsequent representation of Patterson. (Appendix B at 13-14). Again, Patterson is not asserting here his trial counsel’s performance was compromised by an apparent conflict of interest or even an actual conflict of interest. Mr. Wald may have even provided Patterson with waiver of the conflict, and Patterson may have agreed to Mr. Wald’s representation. Again, however, this “why” is worthy of exploration on postconviction relief.

If, for example, this Court or a postconviction court on remand concludes Mr. Wald’s representation was of a type that amounted to

Cronic error¹² then Patterson is relieved of establishing the prejudice prong he would otherwise have to establish under a traditional *Strickland* analysis. This claim could not have been raised on direct appeal from the underlying criminal case because Patterson was potentially unaware of a potential conflict. Although it could have realistically been developed during the postconviction process, it does not appear that Ms. Stong became aware of Mr. Wald's representation of Cpt. Reddick until the hearing, by which time she had already been precluded from filing an amended petition. Further, this claim cannot now be raised and addressed on its merits on direct appeal because of the course of proceedings below. For this reason, the Court should reverse the postconviction court's ruling on this aspect of Patterson's sixth claim to allow for further factual development.

Given the totality of these circumstances, the appearance of a potential conflict of interest that occurred during Patterson's trial, and the open "why" questions that were unanswered during the postconviction proceeding, this Court should reverse the court's orders

¹² *United States v. Cronic*, 466 U.S. 648 (1984)

denying the majority of Patterson's claims.

II. The district court also erred when it deprived Patterson of his ability to conduct DNA testing pursuant to Mont. Code Ann. § 46-21-110

Relying almost exclusively on this Court's prior ruling on Patterson's direct appeal, the district court denied Patterson's request for DNA testing pursuant to *Mont. Code Ann. § 46-21-110*. Mainly, the basis for the court's ruling is that "[t]he identification of an alternative suspect does not exonerate the Petitioner of this crime." (Appendix A at 4). Outright exoneration is not, however, the standard articulated in the statute. Certainly, the "identity of the perpetrator was . . . a significant issue in the case." *Mont. Code Ann. § 46-21-110(5)(b)*. Patterson denied he was the perpetrator. This poses the question in the face of A.K.'s claims she had been sexually abused: If not Patterson, then who? Even at the time of trial, there was evidence of another suspect or defendant who had abused A.K.

This Court's decision in *Patterson* characterized the holding of the trial court as: "The court ultimately granted the State's motion and excluded from evidence at trial any mention of the test results

concerning the stain on A.K.'s shirt. However, the court allowed evidence and argument that the clothing worn by A.K., and a vaginal swab from her person, were analyzed and that Patterson's DNA was not discovered in that testing." *Patterson*, ¶ 6.

At trial, the jury heard testimony from an expert from the Crime Lab. He tested two items of clothing relevant to the alleged victims. One item belonged to T.P. The second item belonged to A.K. On the item belonging to T.P., the expert testified there was also an epithelial cell that resulted in a match to one-in-276 sextillion Caucasian males. The T.P. item also contained a seminal stain, i.e., the liquid portion of ejaculate, but not spermatozoa. (DC 10-38 Tr. at 595-596). The jury was then immediately told that an individual who had a vasectomy could make a seminal stain but not deposit spermatozoa. That testimony was almost immediately followed with testimony about the clothing from A.K. The State's expert testified – using A.K.'s actual shirt – that a stain was found on the shirt, but Patterson was excluded as a possible contributor. (Id. at 601). In light of how the trial played out, it must be questioned why A.K.'s shirt or testimony about the stain

was even relevant.

A second factor the court must decide before granting a petition for DNA testing is whether “in light of all the evidence there is a *reasonable probability* that the petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution.” *Mont. Code Ann. § 46-21-110(5)(b)* (emphasis added). Part of a defendant’s ability to rebut a case is both to challenge the way evidence was collected and how the investigation against him progressed, including police failure to pursue plausible investigative leads about third parties who might be the real culprit. Edward J. Imwinkelried, “*Evidence of Third Party’s Guilt of the Crime that the Accused is Charged With: The Constitutionalization of SODDI (Some Other Dude Did It) Defense 2.0*”, Univ. of California, Davis Legal Studies Research Paper No. 401 at pg. 5 (Dec. 2014).¹³ Patterson’s jury was obviously discerning because it acquitted him of several serious counts.

In light of the evidence available to the postconviction court,

¹³Available at: <http://ssrn.com>

including Ms. Strong’s January 3, 2022, representation to the court that “Kathryn [*sic*] Truman’s notes in the Montana Crime lab file – received only recently – in which another perpetrator was identified – the victim’s brother,” (Dkt 151 at 2), and notwithstanding the fact that A.K.’s father was in custody, there is a reasonable probability that DNA testing on A.K.’s shirt would reveal that Patterson should not have been convicted. It could have proved valuable at trial for a number of reasons including, impeachment of the Crime Lab expert, impeachment of A.K., and to challenge law enforcement’s investigation in the case and its failure to pursue other avenues of investigation.

Conclusion

For these reasons and those set forth in the record (and **not** set forth in the record), Patterson respectfully requests this Court reverse the district court’s holdings denying his claims on postconviction relief as well as his petition for DNA testing.

Respectfully submitted this 16th day of March, 2026

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Certificate of Compliance

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that the Appellant's Opening Brief is printed with proportionately-saced Century typeface of 14 points; is double-spaced except for lengthy quotations or footnotes; and does not exceed 10,000 words. The exact word count, as calculated by my WordPerfect software and excluding table and certificates is 8,867.

Dated this 16th day of March, 2026.

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CERTIFICATE OF SERVICE

I, Colin M. Stephens, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-16-2026:

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