

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0677

ORIGINAL

JUAN ANASTASIO RODRIGUEZ,

Petitioner and Appellant,

v.

FILED

ORDER

STATE OF MONTANA,

MAR 31 2026

Respondent and Appellee.

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

Juan Anastasio Rodriguez has filed a Petition for Rehearing of this Court’s Opinion issued on February 24, 2026. *See Rodriguez v. State*, 2026 MT 35N. The State has filed a response.

In Rodriguez’s 918-page postconviction relief (PCR) petition, he raised 63 Grounds for relief. Of those, 48 Grounds asserted claims of ineffective assistance of counsel (IAC). On appeal, Rodriguez’s briefing reorganized the 48 IAC Grounds into approximately 10 IAC Claims within 5 stated issues.<sup>1</sup> We dismissed IAC Claim 4 on the basis that it was not raised in any of the 63 Grounds originally asserted in the PCR petition. *See State v. Wetzel*, 2005 MT 154, ¶ 13, 327 Mont. 413, 114 P.3d 269 (“It is well established that this Court will not address either an issue raised for the first time on appeal or a party’s change in legal theory.”).

Rodriguez takes issue with the dismissal of that claim, contending the Court erred by concluding that IAC Claim 4 was not included in his postconviction relief petition.

<sup>1</sup> We refer to the 10 IAC claims as “approximately 10” because, although they were labeled Claims 1 through 10, many encompassed multiple distinct issues and arguments. Claim 10, for example, contended that “Trial counsel was deficient for additional reasons,” and then argued about allegedly improper expert testimony and improper jury instructions, each with distinct legal analyses. Parties “are encouraged to limit the number of issues to 4 or fewer,” and Rodriguez’s briefing, though broadly organized into five issue categories, actually far exceeded that number. M. R. App. P. 12(1)(b).

Rodriguez argues that because he proceeded pro se in the District Court, his pleadings should be construed liberally, and that, when “construing Ground 15 liberally and giving it every reasonable inference, Ground 15 [of the PCR petition] adequately describes and articulates Claim 4 [of the appellate briefing].”

While we attempt to liberally construe the pleadings of pro se litigants, none of the approximately 10 IAC Claims advanced on appeal expressly referenced any of the Grounds as organized in the PCR petition. The Court was required to cross-reference the 918-page PCR petition with Rodriguez’s opening brief to determine whether there was support in the record for the 10 IAC Claims as stated on appeal. In doing so, we determined that appellate IAC Claim 4 most closely related to PCR Ground 15, as no other Ground stated in Rodriguez’s PCR petition came close to equating with it.

Claim 4 argued that, (1) a structural error occurred at trial because “Rodriguez was not permitted to testify in his own behalf”; and (2) Rodriguez received ineffective assistance of counsel because trial counsel “promised the jury a ‘he said-she said’ defense but did not present the testimony of Rodriguez.” Rodriguez’s Claim 4 argument noted that trial counsel repeatedly used the phrase “he said-she said” in both opening statement and closing argument, and that the “he said-she said” framing was a theme of the defense.

With respect to the structural error argument within Claim 4, Ground 15 in Rodriguez’s PCR petition is expressly labeled as an ineffective assistance of counsel claim. A structural error claim based on a defendant’s right to testify presents a distinctly different constitutional legal theory from an IAC claim, and may have been waived for not raising it in Rodriguez’s direct appeal, or constitute a basis for a claim of appellate IAC. Rodriguez advanced no legal argument within Ground 15 that a structural error existed regarding a constitutional right to testify, and thus the structural error component of Claim 4 was not raised in the PCR petition.

As to the IAC portion of Claim 4, Ground 15 of the PCR petition did not use or reference the phrase “he said-she said,” an omission with significance given that trial counsel assertedly used this framing at trial. Although Rodriguez had access to the trial transcript, he chose not to include that specific language in his PCR petition. The “he said-

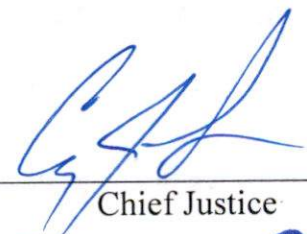
she said” argument appeared for the first time on appeal. We reject the contention that trial counsel’s use of the phrase “he said-she said” necessarily equated to a “promise” by trial counsel that the defendant would testify, as argued in Claim 4. We also disagree that a “he said-she said” theory accurately summarizes the IAC claim stated in Ground 15, which focused on theoretical testimony Rodriguez could have provided to rebut the testimony of “[J.S.], Evans, Hahn, Paliga, and Stevens.” Paliga and Stevens are both male and it appeared trial counsel’s “he said-she said” reference was rather directed at J.S., the victim, rather than the broader list of witnesses identified in Ground 15. Regardless of what trial counsel intended by use of the phrase, any promise that the jury would hear from Rodriguez based on a “he said-she said” argument as used by trial counsel was certainly not argued in Ground 15, or anywhere else in Rodriguez’s PCR petition. Finally, we note that the State pointed out in its Appellee brief that Claim 4 advanced a new legal theory not made in Rodriguez’s PCR petition, and Rodriguez did not challenge the State’s characterization in his reply brief.

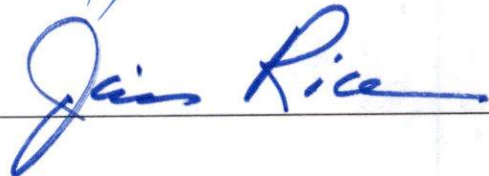
In accordance with M. R. App. P. 20(1)(a), this Court “will consider a petition for rehearing presented only upon the following grounds: (i) That it overlooked some fact material to the decision; (ii) That it overlooked some question presented by counsel that would have proven decisive to the case; or (iii) That its decision conflicts with a statute or controlling decision not addressed by the supreme court.” Having reviewed the petition, we conclude that Rodriguez has not demonstrated the existence of any of the criteria which would warrant rehearing under M. R. App. P. 20(1)(a)(i)-(iii). Therefore,

IT IS ORDERED that the Petition for Rehearing is DENIED and DISMISSED.

The Clerk of the Supreme Court is directed to provide a copy of this Order to all parties.

DATED this 31<sup>st</sup> day of March, 2026.

  
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Chief Justice

  
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Juan Rivera

Laurie M. Con

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Peter J. Con

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Angela J. Con

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Justices