

DA 25-0394

IN THE SUPREME COURT OF THE STATE OF MONTANA

2026 MT 198N

NEIL LYNN NUNES,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Ninth Judicial District,
In and For the County of Teton, Cause No. DC-19-028
Honorable Gregory L. Bonilla, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Neil Nunes, Self-Represented, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Cori Losing, Assistant
Attorney General, Helena, Montana

Joe Coble, Teton County Attorney, Choteau, Montana

Submitted on Briefs: July 15, 2026

Decided: August 18, 2026

Filed:


Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Neil Nunes (Nunes) appeals from the June 17, 2025 Judgment entered in the Ninth Judicial District Court, Teton County, denying his petition for postconviction relief. We affirm.

¶3 Nunes was convicted by a jury in April 2021 for his failure to notice change of residence and three counts of tampering with witnesses. *State v. Nunes*, No. DA 21-0454, 2024 MT 147N, ¶ 4, 2024 WL 3423999. He was sentenced on July 7, 2021, and his convictions were affirmed on August 5, 2024. *Nunes*, ¶ 13. The sole issue raised by Nunes in his direct appeal was an alleged violation of his right to a speedy trial.¹ *Nunes*, ¶ 4.

¶4 On October 8, 2024, Nunes petitioned the District Court for postconviction relief related to his tampering charges on primarily three grounds: (1) he was denied the effective assistance of counsel, (2) the search and seizure was unconstitutional, and (3) the process of filing an information rather than securing an indictment by a grand jury was allegedly unconstitutional. In his brief accompanying his Petition, Nunes set forth additional

¹ Nunes has, throughout the pendency of his trial and appellate proceedings, filed numerous petitions for habeas corpus relief and collateral relief. Those pleadings and dispositions are not relevant to the current appeal of his postconviction petition.

grounds which the District Court interpreted as due process violations, ineffective assistance of counsel (IAC) claims, allegations of judicial bias, procedural fairness, Fourth Amendment violations, and newly discovered evidence claims.

¶5 On June 17, 2025, the District Court denied Nunes’s Petition, concluding that Nunes’s IAC claims were conclusory and not supported by facts showing prejudice, and that Nunes’s remaining claims were procedurally barred by § 46-21-105(1)(b), MCA, because they could have been raised on direct appeal. Regarding Nunes’s assertion of “newly discovered evidence,” the District Court concluded that it did not meet the threshold standard for newly discovered evidence set forth in § 46-21-102(2), MCA, because no specific evidence was attached or identified and generalized allegations did not warrant relief or an evidentiary hearing.

¶6 Nunes appeals, raising substantially the same issues.²

¶7 We review a district court’s denial of postconviction relief to determine whether the court’s findings of fact are clearly erroneous and whether its conclusions of law are correct. *Sartain v. State*, 2012 MT 164, ¶ 9, 365 Mont. 483, 285 P.3d 407. Although Nunes’s challenges on appeal do not directly align with what he raised in the District Court, we will

² On March 23, 2026, Nunes moved this Court for permission to amend his postconviction relief brief to include claims related to his failure to notice change of residence conviction. This Court denied Nunes’s motion on April 21, 2026. *Nunes v. State*, No. DA 25-0394, Order (Mont. Apr. 21, 2026). Nunes then filed his reply brief on April 27, 2026, which he titled “Opening Brief,” prompting the State to file a motion to have it stricken because it raised several new issues relating to his underlying convictions. We held our order in abeyance pending outcome of this appeal. *Nunes v. State*, No. DA 25-0394, Order (Mont. May 18, 2026). We now hold that while Nunes has raised new issues in his reply brief which were not raised before the District Court, they are denied as being conclusory and without adequate support or procedurally barred.

consider whether the District Court's order was correct based on the claims properly raised. Nunes can only raise on appeal what he has first raised in the trial court.

¶8 A defendant is guaranteed the right to the effective assistance of counsel through the Sixth and Fourteenth Amendments to the United States Constitution and Article II, Section 24, of the Montana Constitution. We apply a two-pronged *Strickland*³ standard to IAC claims. The petitioner must demonstrate that counsel's performance was both deficient and that he or she suffered prejudice because of the deficient performance. *Whitlow v. State*, 2008 MT 140, ¶ 10, 343 Mont. 90, 183 P.3d 861. Further, counsel's performance is presumed constitutionally effective and a defendant raising an IAC claim bears a heavy burden of overcoming that strong presumption. *Whitlow*, ¶ 21. Here, Nunes did not provide what actions his attorney did or did not take which were deficient, and he did not provide any analysis or reasoning as to how those actions prejudiced his defense. Accordingly, his allegations were conclusory and the District Court correctly denied Nunes's petition on this basis.

¶9 Section 46-21-105(2), MCA, provides that "[w]hen a petitioner has been afforded the opportunity for a direct appeal of the petitioner's conviction, grounds for relief that were or could reasonably have been raised on direct appeal may not be raised, considered, or decided in a proceeding brought [pursuant to a postconviction proceeding]." We have reviewed Nunes's claims that are not based on IAC. Those claims could have been raised on direct appeal. As the District Court found, claims related to the validity of the search

³ *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984).

and seizure were available and should have been raised on direct appeal. Issues concerning judicial bias, procedural fairness, filing of an information rather than an indictment, and Nunes's other claims were errors that could have been raised on direct appeal. Unless a postconviction petitioner can demonstrate a fundamental miscarriage of justice, we will consistently apply the procedural bar. *State v. Baker*, 272 Mont. 273, 281, 901 P.2d 54, 59 (1995). Nunes has not demonstrated why the procedural bar should not apply.

¶10 Finally, we agree that the District Court's conclusion that Nunes has failed to meet the threshold requirement for establishing newly discovered evidence. As the District Court found, no specific evidence was attached to Nunes's petition or otherwise identified as newly discovered evidence. Accordingly, Nunes provides no newly discovered evidence sufficient to meet the threshold requirement established by §46-21-102(2), MCA, or to avoid the procedural bar of § 46-21-105(1)(b), MCA.

¶11 We conclude that Nunes has not demonstrated the District Court's findings of fact were clearly erroneous or that the Court's conclusions of law were in error.

¶12 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶13 Affirmed.

/S/ LAURIE McKINNON

We Concur:

/S/ CORY J. SWANSON

/S/ KATHERINE M. BIDEGARAY

/S/ INGRID GUSTAFSON

/S/ JIM RICE