

No. 03-089

IN THE SUPREME COURT OF THE STATE OF MONTANA

2003 MT 237N

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RICHARD L. MERRILL,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Respondent.

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APPEAL FROM: District Court of the Tenth Judicial District,  
In and For the County of Fergus, Cause Nos. DV-02-91; DV-02-67; DC-01-  
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Honorable E. Wayne Phillips, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Richard L. Merrill, Pro Se, Deer Lodge, Montana

For Respondent:

Honorable Mike McGrath, Attorney General; Jim Wheelis, Assistant  
Attorney General; Helena, Montana

Thomas P. Meissner, County Attorney; Monte J. Boettger, Deputy  
County Attorney; Lewistown, Montana

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Submitted on Briefs: July 24, 2003

Decided: September 9, 2003

Filed:

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Clerk

Chief Justice Karla M. Gray delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, the following decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by case title, Supreme Court cause number, and result to the State Reporter Publishing Company and to West Group in the quarterly table of noncitable cases issued by this Court.

¶2 Richard L. Merrill, appearing *pro se*, appeals from the Order on Petition for Post Conviction Relief entered by the Tenth Judicial District Court, Fergus County. We affirm.

¶3 Pursuant to a plea agreement in the underlying criminal proceeding, the District Court sentenced Merrill to a sentence of 22 years, with 15 years suspended, for the felony offense of sexual assault. Thereafter, Merrill timely filed a petition for postconviction relief which the District Court denied. On appeal, Merrill sets forth issues of ineffective assistance of counsel, prosecutorial misconduct, inaccurate calculation of restitution, judicial misconduct, due process violations, and lack of an evidentiary hearing on his petition.

¶4 We have determined to decide this case pursuant to our Order dated February 11, 2003, amending Section I.3 of our 1996 Internal Operating Rules and providing for memorandum opinions. On the face of the briefs and the record before us on appeal, it is manifest that the appeal is without merit because the issues are clearly controlled by settled Montana law which the District Court correctly interpreted and because it is clear that no abuse of discretion occurred.

¶5 Affirmed.

/S/ KARLA M. GRAY

We concur:

/S/ PATRICIA COTTER

/S/ JAMES C. NELSON

/S/ JOHN WARNER

/S/ JIM REGNIER