

DA 21-0657

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 90N

STATE OF MONTANA

Plaintiff and Appellee,

v.

DANIEL E. NEWBY,

Defendant and Appellant.

APPEAL FROM: District Court of the Sixteenth Judicial District,
In and For the County of Custer, Cause No. DC 2020-72, DC 2020-38,
DC 2020-50
Honorable Nickolas C. Murnion, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Daniel E. Newby, Self-Represented, Shelby, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Christine M. Hutchison,
Assistant Attorney General, Helena, Montana

Wyatt A. Glade, Custer County Attorney, Miles City, Montana

Submitted on Briefs: February 22, 2023

Decided: May 16, 2023

Filed:


Clerk

Justice James Jeremiah Shea 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, 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 Daniel E. Newby appeals from the December 16, 2021 Order of the Sixteenth Judicial District Court denying his petition for postconviction relief because he failed to satisfy the statutory requirements of a postconviction petition pursuant to §§ 46-2-104(1) and 46-2-104(2), MCA. We affirm.

¶3 Newby pled guilty, and on July 9, 2021, was sentenced in three separate cases to strangulation of a partner or family member, criminal endangerment, and sexual intercourse without consent. Four months later, Newby filed identical "Motion[s] to Dismiss Judgment and Information Due to Judicial Bias resulting in Void Judgment as a Matter of Law" in all three cases. In his motions, Newby alleged that he had consensual sex with the victim who told him she was 18 years old; there was impermissible judicial bias because the District Court judge was prejudging Newby's guilt by reviewing the Informations and signing arrest warrants; there was malicious prosecution because the prosecutor was "stacking" charges to deter Newby from taking his cases to trial; and his counsel was ineffective because he failed to consult with Newby prior to any hearing or plea negotiations, failed to give Newby discovery or disclose all evidence the prosecution turned over, failed to interview all of the witnesses, failed to oppose Newby's arrest, and failed to object to the judicial bias and malicious prosecution.

¶4 On December 16, 2021, the District Court denied Newby’s motion in a single order encompassing all three cases. The District Court noted that Newby had missed his window to directly appeal and therefore his claims were barred. The District Court proceeded to treat the motion as a petition for postconviction relief but found it did not meet the postconviction petition pleading standards because the motion failed to identify all facts supporting the grounds for relief, Newby did not attach affidavits, records, or other evidence establishing the existence of facts, and the petition was not accompanied by supporting memoranda with appropriate citations and discussion of authorities. On August 8, 2022, Newby appealed the District Court’s order, adding new allegations in addition to the ones included in his motions before the District Court.

¶5 We review a district court’s denial of a petition for postconviction relief for whether its findings of facts are clearly erroneous and whether its conclusions of law are correct. *State v. Wright*, 2001 MT 282, ¶ 9, 307 Mont. 349, 42 P.3d 753. A district court’s dismissal of a petition for postconviction relief as a matter of law is reviewed for correctness. *Herman v. State*, 2006 MT 7, ¶ 13, 330 Mont. 267, 127 P.3d 422.

¶6 Newby raises several claims on appeal, some of which he raised in his petition before the District Court, some of which he did not.¹ Newby’s new claims on appeal include claims of malicious prosecution based on the prosecution allegedly threatening to charge Newby with witness tampering and telling Newby if he pled guilty the State would not pursue any additional charges; judicial conflict of interest based on the same judge

¹ We refer to Newby’s motion as his “petition” to be consistent with the District Court’s treatment of his motion as a petition for postconviction relief.

simultaneously presiding over Newby's criminal and family law cases; and ineffective assistance of counsel based on his counsel's alleged failure to take a number of actions. Newby states that his counsel failed to advise him that the State lacked evidence for a conviction, failed to review testimony from Newby's friends and family, and failed to object to the State's alleged coercion and threats and the judge's conflict of interest.

¶7 All grounds for relief claimed by a petitioner for postconviction relief must be raised in the original or amended petition. Section 46-21-105(1)(a), MCA. This Court does not review claims that were not preserved for appeal in the District Court. *Ellenburg v. Chase*, 2004 MT 66, ¶¶ 14, 18, 320 Mont. 315, 87 P.3d 473. To the extent they were not already barred by his failure to raise them on direct appeal, Newby could have raised these new claims in his original petition; he failed to do so, and the claims are not preserved for purposes of appeal. We do not consider the claims that Newby raises for the first time on appeal.

¶8 The remainder of Newby's claims are procedurally barred. Newby claims, as he did to the District Court, that the victim identified herself as 18 years old, and Newby was deceived into voluntarily having consensual sex with her; the charging information was invalid as a matter of law due to the District Court's judicial bias; the State's malicious prosecution induced Newby to plead guilty; and numerous ineffective assistance of counsel claims, including that his counsel failed to consult and meet with him, failed to disclose all the evidence provided by the prosecution, failed to object to the State's alleged conflict of interest, and failed to adequately interview all of Newby's and the State's witnesses.

¶9 “Postconviction statutes are demanding in their pleading requirements.”

Ellenburg, ¶ 12. A petition for postconviction relief must be filed within one year of the date the conviction becomes final, § 46-21-102(1), MCA, and it must:

- (a) identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and clearly set forth the alleged violations;
- (b) identify any previous proceedings that the petitioner may have taken to secure relief from the conviction; and
- (c) 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.

Section 46-21-104(1), MCA. The petition must also be accompanied by a supporting memorandum that includes appropriate arguments, citations, and discussion of authorities.

Section 46-21-104(2), MCA. A court may dismiss a petition for postconviction relief without holding a hearing if the procedural pleading requirements are not satisfied.

Herman, ¶ 15.

¶10 The District Court did not err in dismissing Newby’s postconviction petition. On appeal Newby does not argue that he satisfied these pleading standards in his petition. Instead, without any supporting legal authority, he reargues the merits of his claims and adds several new claims. We do not “conduct legal research on [an] appellant’s behalf, [] guess as to his precise position, or [] develop legal analysis that may lend support to his position.” *State v. Hicks*, 2006 MT 71, ¶ 22, 331 Mont. 471, 133 P.3d 206 (internal quotations and citation omitted). On these grounds alone, Newby’s claims fail.

¶11 Newby also fails to satisfy the pleading standards of §§ 46-21-104(1) and -104(2), MCA. Newby describes facts that he contends would prove his innocence and states that

video records, transcripts, witness statements, and medical records would prove the existence of these facts. Newby does not describe the substance of the alleged evidence, but summarily makes statements such as “vidoe [sic] evidence alone would have made him an innocent man,” and does not attach “affidavits, records, or other evidence establishing the existence of those facts” or the requisite memorandum discussing supporting legal authority. Section 46-2-104(1), (2), MCA. “Mere conclusory allegations” do not satisfy the demanding postconviction pleading standards, and the District Court did not erroneously dismiss Newby’s petition. *Ellenburg*, ¶ 16.

¶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. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. We affirm the District Court’s denial of Newby’s “Motion to Dismiss Judgment and Information due to Judicial Bias resulting in Void Judgment as a Matter of Law” in each of the three cases.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR