

No. 91-097

IN THE SUPREME COURT OF THE STATE OF MONTANA

1991

HOWARD L. BASHOR,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Respondent.

APPEAL FROM: District Court of the Ninth Judicial District,
In and for the County of Toole,
The Honorable Kenneth R. Wilson, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Howard L. Bashor, Pro se; Deer Lodge, Montana

For Respondent:

Hon. Marc Racicot, Attorney General, Helena, Montana
Deanne L. Sandholm, Assistant Attorney General,
Helena, Montana
Merle J. Raph, Toole County Attorney, Shelby,
Montana

FILED

Submitted on briefs: August 1, 1991

Decided: August 20, 1991

Filed: AUG 20 1991

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA



Clerk

Justice Terry N. Trieweiler delivered the opinion of the Court.

Howard L. Bashor appeals the order of the District Court of the Ninth Judicial District for Toole County, denying Bashor's petition for postconviction relief. We affirm the District Court.

The sole issue presented for appeal is whether the District Court erred in denying appellant's petition.

Appellant was convicted of deliberate homicide and sentenced to the Montana State Prison on September 13, 1978, for a term of 30 years with 10 years suspended. He appealed his conviction in *State v. Bashor* (1980), 188 Mont. 397, 614 P.2d 470, and this Court affirmed the conviction.

Appellant filed a petition for postconviction relief in this Court on July 20, 1981. The petition was denied. Appellant then filed a petition for writ of habeas corpus with the United States District Court and that petition was denied. See, *Bashor v. Risley* (D.Mont 1982), 539 F.Supp. 259. Bashor appealed, and the Ninth Circuit Court of Appeals affirmed the decision of the District Court. See, *Bashor v. Risley* (1984), 730 F.2d 1228, cert. denied, 469 U.S. 838.

Appellant filed a petition for habeas corpus in this Court on June 24, 1985. We denied the petition on the ground that the claims could have been raised in the original petition for postconviction relief. Appellant proceeded to then file civil actions against the Board of Pardons and Parole in the United States District Court. These actions were dismissed.

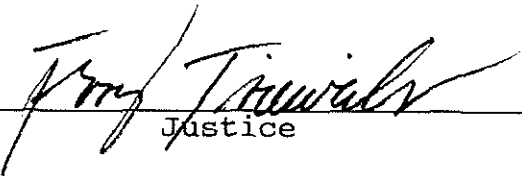
Appellant then filed a petition for postconviction relief in District Court on October 31, 1990, raising the same issues he had raised in his petition for state habeas corpus relief. A supplemental petition followed claiming that his good time allowance had not been correctly calculated. On January 18, 1991, the District Court denied the claims in the petition for postconviction relief for the reason that they had already been considered and dismissed by this Court. The supplemental petition was denied on the grounds that the court did not have jurisdiction over claims regarding good time calculations. This appeal followed. Appellant does not appeal the decision on the supplemental petition.

As noted by the District Court, the matters raised by the appellant in his petition for postconviction relief have been previously considered or are procedurally barred. Appellant's first two claims, alleging illegal arrest and illegal search and seizure, could have been raised on appellant's 1980 appeal to this Court, but were not. Under the provisions of § 46-21-105, MCA, they were, therefore, waived. *State v. Gorder* (1990), 243 Mont. 333, 792 P.2d 370. Appellant is procedurally barred from raising those claims in a petition for postconviction relief.

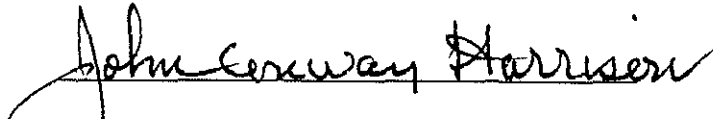
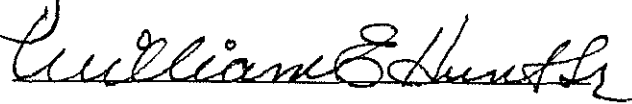
Appellant's third claim, alleging ineffective assistance of counsel, was previously considered and denied in his original 1981 petition for postconviction relief. We conclude that the lower

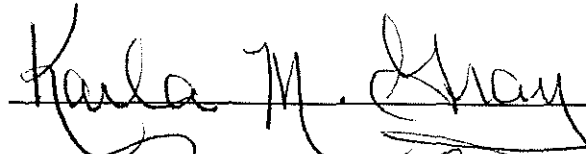
court properly denied appellant's petition and hereby affirm the District Court.

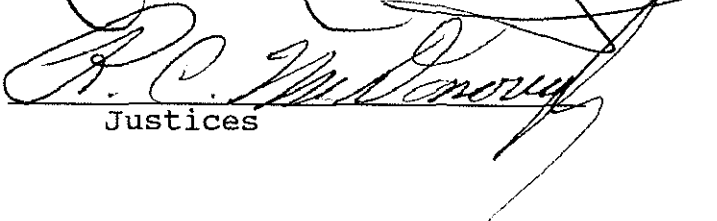
Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1988 Internal Operating Rules, this decision shall not be cited as precedent and shall be published by its filing as a public document with the Clerk of the Supreme Court and by a report of its result to Montana Law Week, State Reporter, and West Publishing Company.


Justice

We concur:




Justices

August 20, 1991

CERTIFICATE OF SERVICE


I hereby certify that the following order was sent by United States mail, prepaid, to the following named:

Howard L. Bashor
700 Conley Lake Rd.
Deer Lodge, MT 59722

Hon. Marc Racicot, Attorney General
Deanne Sandholm, Asst. Attorney General
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Helena, MT 59620

Merle J. Raph
Toole County Attorney
P.O. Box 730
Shelby, MT 59474

ED SMITH
CLERK OF THE SUPREME COURT
STATE OF MONTANA

BY:  _____
Deputy