

DA 07-0309

IN THE SUPREME COURT OF THE STATE OF MONTANA

2008 MT 172N

JAMES M. WARREN,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. ADV 06-887
Honorable Dorothy McCarter, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

James M. Warren (Pro Se), Shelby, Montana

For Appellee:

Hon. Mike McGrath, Attorney General; Mark W. Mattioli, Assistant
Attorney General, Helena, Montana

Leo Gallagher, Lewis and Clark County Attorney; Tara Harris, Deputy
County Attorney, Helena, Montana

Submitted on Briefs: April 24, 2008

Decided: May 13, 2008

Filed:

Clerk

Justice Brian Morris delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following memorandum decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and its case title, Supreme Court 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 Appellant James Michael Warren (Warren), proceeding pro se, appeals the District Court's order denying his petition for postconviction relief. We affirm.

¶3 Warren was convicted of two counts of felony assault with a weapon and one count of felony criminal mischief. This Court affirmed his conviction on direct appeal on November 29, 2005, in *State v. Warren*, 2005 MT 300N, 330 Mont. 399, 126 P.3d 506.

¶4 Warren filed a petition for postconviction relief on December 11, 2006. He asserted four claims: 1) ineffective assistance of counsel; 2) malicious prosecution and "biased judicial activism;" 3) due process violations; and 4) actual innocence. The District Court denied relief with respect to Warren's ineffective assistance claim based upon Warren's failure to prove that his counsel had been ineffective or that Warren had suffered any prejudice from this alleged ineffectiveness. The court rejected Warren's malicious prosecution claim based on Warren's failure to provide factual support and on the basis that the claim was procedurally barred. The court similarly determined that Warren had failed to present any facts in support of his due process claim and that the claim lacked merit. The court finally determined that Warren's actual innocence claim was procedurally barred in

light of the fact that Warren, in essence, sought to pursue a sufficiency of evidence claim that should have been pursued on direct appeal. Warren appeals.

¶5 Warren makes conclusory allegations regarding his counsel's actions during trial. He further provides unsubstantiated allegations regarding the malicious prosecution claim, the due process claim, and his actual innocence claim. We review a district court's denial of a petition for postconviction relief to determine whether the district court's findings of fact are clearly erroneous and whether its conclusions of law are correct. *Hartinger v. State*, 2007 MT 141, ¶ 19, 337 Mont. 432, ¶ 19, 162 P.3d 95, ¶ 19. A petitioner seeking to reverse a district court's denial of a petition for postconviction relief "bears a heavy burden." *Garrett v. State*, 2005 MT 197, ¶ 10, 328 Mont. 165, ¶ 10, 119 P.3d 55, ¶ 10 (quoting *State v. Cobell*, 2004 MT 46, ¶ 14, 320 Mont. 122, ¶ 14, 86 P.3d 20, ¶ 14). We have determined to decide this case pursuant to Section I, Paragraph 3(d), of our 1996 Internal Operating Rules, as amended in 2003, that provide for memorandum opinions. It is manifest on the face of the briefs and record before us that Warren has failed to prove that the District Court's findings of fact were clearly erroneous and that its legal conclusions were incorrect. Warren has failed to carry his very heavy burden seeking to reverse the District Court's order. *Garrett*, ¶ 10.

¶6 We affirm.

/S/ BRIAN MORRIS

We Concur:

/S/ KARLA M. GRAY

/S/ JAMES C. NELSON
/S/ PATRICIA COTTER
/S/ JOHN WARNER