

DA 09-0292

IN THE SUPREME COURT OF THE STATE OF MONTANA

2010 MT 5N

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BOBBY JOE PRICE,

Petitioner and Appellant,

v.

MIKE MAHONEY, Warden,  
and STATE OF MONTANA,

Respondents and Appellees.

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APPEAL FROM: District Court of the Third Judicial District,  
In and For the County of Powell, Cause No. DV 08-117  
Honorable Ray J. Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Patrick F. Flaherty, Attorney at Law; Great Falls, Montana

For Appellees:

Hon. Steve Bullock, Montana Attorney General; Mark W. Mattioli,  
Assistant Attorney General; Helena, Montana

Dennis Paxinos, Yellowstone County Attorney; Billings, Montana  
Lewis Smith, Powell County Attorney

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Submitted on Briefs: November 25, 2009

Decided: January 12, 2010

Filed:

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Clerk

Justice W. William Leahart delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d)(v), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2006, 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 We consider on appeal whether the Third Judicial District Court properly dismissed the claims of Appellant, Bobby Joe Price.

¶3 On November 1, 1994, following an entry of an Alford plea to Attempted Deliberate Homicide, Price was convicted and sentenced to 110 years in prison, subject to a 25-year parole restriction. Price executed an Acknowledgement of Waiver of Rights stating he was satisfied with the services and advice of his attorney and that his plea of guilty was entered freely and voluntarily. He appealed to the Montana Supreme Court and we dismissed the appeal.

¶4 Fourteen years later, on December 24, 2008, Price filed a "Petition for Writ of Habeas Corpus, Or in The Alternative, For Post-Conviction Relief" in Powell County. The District Court dismissed the petition, concluding that Price's claims for Post-Conviction Relief were "unfounded, procedurally barred, time barred and filed in the wrong county and court." Price now appeals the District Court's ruling. We affirm.

¶5 Section 46-21-102, MCA, provides for a one-year time limit on petitions for relief. Price's claims are barred by both the one-year and the former 5-year post-conviction time

bar. Price does not present a colorable claim of actual innocence based on newly-discovered evidence for the purposes of § 46-21-102(2), MCA. Section 46-21-105(2), MCA, provides that “grounds for relief that were or could reasonably have been raised on direct appeal may not be raised, considered, or decided” in post-conviction proceedings. Price’s record-based claims are therefore barred. These claims include his ineffective assistance of counsel claims, his claim that the sentence is facially invalid, his claims regarding the validity of the Alford plea, his deficient State proof claims, and his claim that the court did not engage in a sufficient plea colloquy.

¶6 Lastly, absent cases involving a claim of innocence supported by evidence of a “fundamental miscarriage of justice,” the legislature requires that a motion to withdraw a guilty plea be filed within one year. Section 46-16-105(2), MCA. Prior to the codification of the one-year standard, we generally considered motions untimely if they were not filed within a year, absent “exceptional circumstances.” *See e.g. State v. Morgan*, 2003 MT 193, ¶ 17, 316 Mont. 509, 515, 74 P.3d 1047, 1051. Under the traditional and now statutory one-year requirement, Price’s 14-year-later withdrawal does not constitute a timely motion to withdraw his plea.

¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(d)(v) of our 1996 Internal Operating Rules, as amended in 2006, which provides for memorandum opinions.

¶8 Affirmed.

/S/ W. WILLIAM LEAPHART

We concur:

/S/ PATRICIA O. COTTER

/S/ JAMES C. NELSON

/S/ JIM RICE

/S/ BRIAN MORRIS