

DA 09-0674

IN THE SUPREME COURT OF THE STATE OF MONTANA

2010 MT 126N

ROBERT JAMES THOMAS,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV 09-1313
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Robert James Thomas, Self-Represented, Billings, Montana

For Appellee:

Hon. Steve Bullock, Montana Attorney General; Matthew T. Cochenour,
Assistant Attorney General; Helena, Montana

Fred Van Valkenburg, Missoula County Attorney; Jennifer Clark, Deputy
County Attorney; Missoula, Montana

Submitted on Briefs: May 18, 2010

Decided: June 8, 2010

Filed:

Clerk

Justice Brian Morris 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 Appellant Robert James Thomas (Thomas) appeals from the order of the Fourth Judicial District Court denying his petition for postconviction relief. We affirm.

¶3 Thomas entered guilty pleas to criminal endangerment, driving under the influence of alcohol, being an habitual traffic offender, and obstructing an officer in March 2004 pursuant to a plea agreement with the State. The District Court sentenced Thomas to deferred and suspended sentences on July 16, 2004, in accordance with a plea agreement. Thomas did not appeal his convictions or sentence.

¶4 The State later filed several petitions to revoke Thomas's deferred and suspended sentences. The District Court ultimately revoked Thomas's suspended sentence and imposed a five-year commitment to the Department of Corrections.

¶5 Thomas obtained his criminal defense file from the 2004 charges on April 17, 2009. Based on this information, Thomas filed several petitions in the District Court on October 28, 2009, including a petition for postconviction relief based upon alleged newly discovered evidence. Thomas contended that a letter that he had written to his counsel after his arrest in

2004, coupled with other evidence in his defense file, undermined his conviction for criminal endangerment.

¶6 Thomas sought to avoid the one year time bar on petitions for postconviction relief by asserting an actual innocence claim. He traced this actual innocence claim to the receipt of his defense file in 2009. As Thomas explained to the District Court, he “began discovering numerous pieces of never-before-known and creditable exculpatory evidence.” Thomas refused to provide the District Court, however, with any of the alleged exonerating evidence. Thomas instead claimed that he had “a genuine fear that if the evidence was disclosed prematurely, the State could sabotage [sic] the proceedings or trial.” The District Court denied as time barred Thomas’s petition for postconviction relief. Thomas appeals.

¶7 We review a district court’s findings of fact for clear error and a district court’s conclusions of law for correctness. *Crosby v. State*, 2006 MT 155, ¶9, 332 Mont. 460, 139 P.3d 832. We have determined to decide this case pursuant to Section I, Paragraph 3(d), of our 1996 Internal Operating Rules, as amended in 2006, that provide for memorandum opinions. It is manifest on the face of the briefs and record before us that substantial evidence supports the District Court’s findings of fact and that the District Court correctly analyzed Thomas’s petition.

¶8 We affirm.

/S/ BRIAN MORRIS

We Concur:

/S/ MIKE McGRATH

/S/ MICHAEL E WHEAT
/S/ PATRICIA O. COTTER
/S/ JIM RICE