

DA 13-0823

IN THE SUPREME COURT OF THE STATE OF MONTANA

2014 MT 233N

SHAWN HOWARD WELLER,

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. CDV-2013-358
Honorable Kathy Seeley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Shawn Howard Weller, Self-Represented, Shelby, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Mardell Ployhar, Assistant
Attorney General, Helena, Montana

Leo J. Gallagher, Lewis and Clark County Attorney, Helena, Montana

Submitted on Briefs: August 6, 2014
Decided: August 26, 2014

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and 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 Shawn Weller appeals from the District Court's Order of November 26, 2013, denying his petition for postconviction relief. We affirm.

¶3 Weller filed a timely petition for postconviction relief arising from the July 2012 revocation of his suspended sentence and committing him to serve the remaining term of his original sentence imposed in 2008 after his conviction for felony DUI, persistent felony offender. Weller contends that he received ineffective assistance of counsel in the revocation proceedings even though he acknowledges that he specifically fired his attorney and the record reflects that he requested to represent himself. Weller also contends that many of the people he dealt with in this process were biased and prejudiced against him and that they repeatedly lied and committed all manner of criminal offenses. As the District Court stated, Weller "does not clearly delineate" his claims and "it is difficult to discern what his claims actually are."

¶4 After reviewing the record, it is clear that the District Court properly concluded that Weller's claims could have been raised on direct appeal and, because they were not, they are procedurally barred. Section 46-5-105(2), MCA. In addition, the District Court

properly concluded that Weller failed to provide any material support for his claims of ineffective assistance of counsel, or for any other cognizable claims.

¶5 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for memorandum opinions. The issues in this case are controlled by settled Montana law which the District Court correctly applied.

¶6 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ BETH BAKER

/S/ MICHAEL E WHEAT

/S/ LAURIE McKINNON

/S/ JIM RICE