

DA 15-0339

IN THE SUPREME COURT OF THE STATE OF MONTANA

2015 MT 351N

JARED ROSLING,

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. BDV-2009-445
Honorable Jeffrey M. Sherlock, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jared Lee Rosling (self-represented); Deer Lodge, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Micheal S. Wellenstein,
Assistant Attorney General; Helena, Montana

Leo Gallagher, Lewis and Clark County Attorney; Helena, Montana

Submitted on Briefs: December 16, 2015
Decided: December 29, 2015

Filed:



Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), 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 Jared Rosling appeals the order of the First Judicial District Court, Lewis and Clark County, dismissing with prejudice his second petition for postconviction relief. Rosling's convictions and sentences for deliberate homicide, aggravated kidnapping, aggravated burglary, tampering with or fabricating physical evidence, and criminal possession of dangerous drugs were upheld by this Court in *State v. Rosling*, 2008 MT 62, 342 Mont. 1, 180 P.3d 1102. We affirmed the dismissal of his first petition for postconviction relief in *Rosling v. State*, 2012 MT 179, 366 Mont. 50, 285 P.3d 486. Rosling's federal habeas corpus petition also was denied in *Rosling v. Kirkegard*, 2014 U.S. Dist. LEXIS 22498, No. CV 12-161-M-DLC-JCL, at *8-9 (D. Mont. Feb. 21, 2014). Here, we affirm the District Court's dismissal of Rosling's second petition for postconviction relief.

¶3 This Court reviews 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. *Marble v. State*, 2015 MT 242, ¶ 13, 380 Mont. 366, 355 P.3d 742. A petitioner must raise all grounds for relief in the original or amended original petition. Section 46-21-105(1)(a), MCA. The petition must "identify all facts

supporting the grounds for relief . . . and have attached affidavits . . . or other evidence establishing the existence of those facts.” Section 46-21-104(1)(c), MCA. A district court must dismiss a second or subsequent petition that raises grounds that reasonably could have been raised in the original or amended original petition. Section 46-21-105(1)(b), MCA.

¶4 Rosling’s second petition fails to comply with our postconviction relief statutes. Rosling alleges that a material witness has recanted his testimony, but he offers no affidavit or other substantive evidence in support of this allegation. Rosling’s second petition, like his first petition, alleges ineffective assistance of his trial counsel for not testing and presenting at trial a latent palm print taken from the crime scene. Under § 46-21-105(1)(b), MCA, Rosling cannot raise this claim again. Finally, Rosling does not cite any “newly discovered evidence” to satisfy § 46-21-102(2), MCA. The District Court correctly dismissed Rosling’s petition.

¶5 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court’s interpretation and application of the law were correct, and its findings of fact are not clearly erroneous. Affirmed.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ LAURIE McKINNON

/S/ MICHAEL E WHEAT

/S/ BETH BAKER

/S/ JIM RICE