

DA 15-0291

IN THE SUPREME COURT OF THE STATE OF MONTANA

2016 MT 5N

JAMES PATRICK BRANDENBURG,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Third Judicial District,
In and For the County of Powell, Cause No. DV- 15-05
Honorable Ray J. Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

James Patrick Brandenburg (self-represented); Deer Lodge, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, C. Mark Fowler,
Assistant Attorney General; Helena, Montana

Lewis K. Smith, Powell County Attorney, L. Jeanine Badanes, Deputy
County Attorney; Deer Lodge, Montana

Submitted on Briefs: December 2, 2015
Decided: January 5, 2016

Filed:



Clerk

Justice Michael E Wheat 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 James Patrick Brandenburg appeals from the order of the Montana Third Judicial District, Powell County, denying his petition for postconviction relief (PCR). We affirm.

¶3 On June 26, 2007, Brandenburg was charged with Escape (a violation of § 45-7-306, MCA) from the Butte Pre-Release Center in Silver Bow County. Brandenburg pled guilty and was sentenced to four years in prison on December 11, 2007. This was the final judgment in the case as Brandenburg did not appeal his conviction or sentence.

¶4 Brandenburg filed a pro se PCR petition in Powell County on January 6, 2015, claiming ineffective assistance of counsel, procedural due process violations, and plea inducements stemming from the escape case. On April 19, 2015, the Powell County District Court entered an Order denying the PCR petition. The court determined the petition was time barred under § 46-21-102, MCA. On appeal, Brandenburg argues that the district court erred in its denial of his PCR petition. Brandenburg's arguments on appeal do not address the court's ruling that his petition was time barred, and he offers no argument regarding his failure to comply with the time bar in postconviction proceedings.

¶5 Section 46-21-102, MCA, provides that a petition for postconviction relief “may be filed at any time within 1 year of the date that the conviction becomes final.” The applicable appeal period in this case adds 60 days (to the one year) to appeal to the Montana Supreme Court. Section 46-21-102(1)(a), MCA. Thus, the total time period for the PCR statute of limitations in this case is 1 year and 60 days from the date of judgment.

¶6 Because Brandenburg filed his PCR petition outside the statute of limitations, he is barred from raising these claims now. Brandenburg was sentenced for Escape on December 11, 2007; thus, pursuant to § 46-21-102, MCA, he had until February 8, 2009 to file a PCR petition. Brandenburg filed this PCR petition on January 6, 2015. Brandenburg missed the PCR petition filing deadline by nearly six years, thus he is procedurally barred from seeking postconviction relief.

¶7 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 ruling was not an abuse of discretion.

¶8 Affirmed.

/S/ MICHAEL E WHEAT

We Concur:

/S/ PATRICIA COTTER

/S/ BETH BAKER

/S/ LAURIE McKINNON

/S/ JAMES JEREMIAH SHEA