

DA 16-0584

IN THE SUPREME COURT OF THE STATE OF MONTANA

2017 MT 213N

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ZACHARY SHAFFER,

Plaintiff and Appellant,

v.

STATE OF MONTANA,

Defendant and Appellee.

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APPEAL FROM: District Court of the Twenty-Second Judicial District,  
In and For the County of Carbon, Cause No. DV 16-79  
Honorable Blair Jones, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Zachary Shaffer (Self-Represented), Shelby, Montana

For Appellee:

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

Alex Nixon, Carbon County Attorney, Red Lodge, Montana

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Submitted on Briefs: August 9, 2017

Decided: August 29, 2017

Filed:



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Clerk

Chief Justice Mike McGrath 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 Zachary G. Shaffer (Shaffer) appeals from a September 19, 2016 District Court order denying his petition for postconviction relief (PCR). We affirm.

¶3 In 2013, a jury convicted Shaffer of felony assault on a police officer. In a separate criminal proceeding, Shaffer entered a nolo contendere plea to intimidation. Following sentencing, Shaffer appealed claiming ineffective assistance of counsel (IAC). This Court affirmed in *State v. Shaffer*, No. DA 13-0355, 2014 MT 340N, 2014 LEXIS 742.

¶4 In 2015, Shaffer filed a petition for PCR asserting procedural error by the District Court. The District Court denied his petition finding Shaffer had failed to provide factual support for his claims. This Court affirmed in *Shaffer v. State*, No. DA 15-0397, 2016 MT 39N, 2016 LEXIS 37. In August 2016, Shaffer filed a second petition for PCR. The District Court determined the petition was not permitted under Montana law and dismissed. Schaffer appeals.

¶5 This Court reviews a district court's denial of a petition for postconviction relief to determine whether its findings of fact are clearly erroneous and its conclusions of law are correct. *Whitlow v. State*, 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861.

¶6 Postconviction statutes are demanding in their pleading requirements. *Ellenburg v. Chase*, 2004 MT 66, ¶ 12, 320 Mont. 315, 87 P.3d 473. A person seeking PCR must raise all grounds for relief in the original petition. Section 46-21-105(1)(a), MCA. The court must dismiss a second petition unless that petition raises grounds for relief that could not reasonably have been raised in the original petition. Section 46-21-105(1)(b), MCA. IAC claims in an original petition for PCR may not be raised in a second petition for PCR. Section 46-21-105(2), MCA. Postconviction relief is not available upon claims that could have been raised on direct appeal. *Lacey v. State*, 2017 MT 18, ¶ 17, 386 Mont. 204, 389 P.3d 233 (citing *Gollehon v. State*, 1999 MT 210, ¶ 51, 296 Mont. 6, 986 P.2d 395.)

¶7 Shaffer's second petition for PCR did not raise any issues that either were not or could not have been raised in the original petition or on direct appeal. The District Court's conclusions of law were correct. Shaffer's petition was properly dismissed.

¶8 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.

¶9 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ LAURIE McKINNON

/S/ JIM RICE