

DA 17-0248

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 104N

ROBERT CRAWFORD,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause No. DV-17-89
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Robert Crawford, Self-Represented, Anaconda, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Katie F. Schulz, Assistant
Attorney General, Helena, Montana

Steven N. Eschenbacher, Lake County Attorney, James Lapotka, Deputy
County Attorney, Polson, Montana

Submitted on Briefs: February 28, 2018

Decided: May 1, 2018

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, 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 Robert Crawford ("Crawford"), appearing pro se, appeals from the April 20, 2017 Order of the Twentieth Judicial District Court, Lake County, denying and dismissing his Petition for Postconviction Relief ("PCR"). We address whether the District Court erred in dismissing Crawford's PCR Petition. We affirm.

¶3 In 2013, a jury found Crawford guilty of criminal possession of dangerous drugs. The District Court sentenced him as a persistent felony offender for a term of twenty years with ten years suspended. Crawford timely appealed. In 2016, we affirmed Crawford's conviction, addressing issues related to: (1) the suppression of methamphetamine that officers found on Crawford incident to his arrest for violating the terms of his parole; (2) claims of ineffective assistance of counsel ("IAC"), on the basis that Crawford's trial counsel was ineffective because he did not submit proposed findings of fact and conclusions of law following the suppression motion hearing; (3) the denial of Crawford's third discovery request; (4) the District Court's failure to arraign him on the Second Amended Information; and (5) the District Court's adequacy in addressing his

complaints about his assigned trial counsel. *State v. Crawford*, 2016 MT 96, 383 Mont. 229, 371 P.3d 381.¹

¶4 On April 18, 2017, Crawford filed a PCR Petition, raising thirteen grounds: (1) IAC based on multiple allegations of deficient performance; (2) illegal search and seizure; (3) the arresting officer acted outside the scope of his authority; (4) evidence seized pursuant to a facially invalid warrant; (5) conviction based on false evidence; (6) the State's failure to produce evidence; (7) the State's destruction of evidence; (8) the district court's failure to arraign him on the Second Amended Information; (9) prosecutorial misconduct for exploiting Crawford's post arrest "silence"; (10) due process violations for preventing Crawford from arguing the legality of the stop, arrest, and search to the jury; (11) prosecutorial misconduct for vouching for State witnesses and denigrating defense witnesses; (12) a speedy trial violation due to systemic breakdown in public defender office; and (13) a due process violation because the State intentionally overcharged and penalized him for taking the case to trial by asking for a forty-year sentence. On April 20, 2017, the District Court denied and dismissed Crawford's Petition without requiring a response from the State on the basis that "the petition and files and records of the case conclusively show that the petitioner is not entitled to the relief requested, and because the issues raised in the petition (suppression of evidence and

¹ Crawford also filed a Complaint alleging constitutional violations under 42 U.S.C. § 1983 in the U.S. District Court for the District of Montana, which dismissed the case and ordered the docket reflect, pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure, that any appeal would not be taken in good faith because the record clearly shows the Complaint is frivolous as it lacks arguable substance in law or fact. *Crawford v. Couture*, No. CV-17-00004-H-BMM-JTJ, 2017 U.S. Dist. LEXIS 195189 (D. Mont. Nov. 28, 2017).

[IAC]) were raised and addressed on direct appeal. MCA 46-21-201; 46-21-105(2).” On appeal, Crawford argues the District Court erred in dismissing his PCR Petition without addressing his non-record-based claims of IAC.

¶5 We review a district court’s denial of a PCR petition to determine whether its findings of fact are clearly erroneous and its conclusions of law are correct. *Sartain v. State*, 2012 MT 164, ¶ 9, 365 Mont. 483, 285 P.3d 407. We review discretionary rulings in PCR proceedings, including rulings related to whether to require the State’s response or to hold an evidentiary hearing, for an abuse of discretion. *Sartain*, ¶¶ 9, 42–44 (quoting § 46-21-201, MCA). We review mixed questions of law and fact presented by IAC claims de novo. *Sartain*, ¶ 9.

¶6 A PCR petition may not be based upon grounds for relief that were or could reasonably have been raised on direct appeal. Section 46-21-105(2), MCA; *Rukes v. State*, 2013 MT 56, ¶ 8, 369 Mont. 215, 297 P.3d 1195. The petition must identify all facts that support the claims for relief. Section 46-21-104(1)(c), MCA; *Ellenburg v. Chase*, 2004 MT 66, ¶ 12, 320 Mont. 315, 87 P.3d 473. The petitioner has the burden to show by a preponderance of the evidence that the facts justify relief. *Ellenburg*, ¶ 12 (citing § 46-21-104, MCA); *Sartain*, ¶ 9 (providing that a petitioner seeking to reverse a district court’s denial of a PCR petition bears a heavy burden.). If a district court determines that “the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief,” the district court may dismiss the proceedings without requiring a response by the State or without holding an evidentiary hearing. *Sartain*, ¶¶ 42–44 (quoting § 46-21-201(1)(a), MCA).

¶7 When addressing an IAC claim, we distinguish between claims that are record-based and non-record-based: “If the record does not supply the reason for counsel’s act or omission, the claim must be raised by petition for post-conviction relief.” *State v. Bateman*, 2004 MT 281, ¶ 23, 323 Mont. 280, 99 P.3d 656 (internal citations omitted). We apply a two-prong test to review IAC claims as set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). *Whitlow v. State*, 2008 MT 140, ¶ 20, 343 Mont. 90, 183 P.3d 861. A petitioner claiming IAC must show by a preponderance of the evidence that: (1) counsel’s performance was deficient; and (2) the deficient performance prejudiced the defense. *Whitlow*, ¶ 10; *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2064. Trial counsel’s performance is deficient if it falls “below an objective standard of reasonableness measured under prevailing professional norms and in light of surrounding circumstances.” *Whitlow*, ¶ 20. A strong presumption exists that counsel’s actions were within the broad range of professional assistance, *Whitlow*, ¶ 15, because “[t]here are countless ways to provide assistance in any given case.” *Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065. To establish prejudice by counsel’s deficient performance, a petitioner must demonstrate a reasonable probability that, but for counsel’s deficient performance, the result of the proceeding would have been different. *Whitlow*, ¶¶ 20–21. A petitioner must satisfy both prongs of the test to prevail; and if a petitioner fails to prevail on one prong, we are not obligated to address the other. *Whitlow*, ¶ 11; *Strickland*, 466 U.S. at 687, 697, 104 S. Ct. at 2064, 2069.

¶8 The State argues Crawford waived Grounds 2 through 13, and is otherwise procedurally barred from raising his non-IAC claims because they were either decided by

this Court on direct appeal or could have been raised on appeal but were not. The State further argues Crawford's IAC claims are barred because this Court affirmed the District Court's rulings on many of the issues underlying his claims against trial counsel, determining such claims lacked merit. *See State v. Southwick*, 2007 MT 257, ¶¶ 15–19, 339 Mont. 281, 169 P.3d 698 (holding that res judicata generally precludes review of issues already decided in a prior appeal). Alternatively, the State asserts Crawford's IAC claims fail to overcome the strong presumption that his attorney's performance was within the wide range of reasonable and sound professional decisions and has not established counsel performance was deficient. We agree.

¶9 Crawford's claims and proffered evidence that his trial counsel failed to follow through on his discovery requests regarding a litany of allegations against law enforcement fail to overcome the strong presumption that his counsel's actions were within the broad range of professional assistance. *See Whitlow*, ¶¶ 15, 20; *Strickland*, 466 U.S. at 688–89, 104 S. Ct. at 2064–65. The *Strickland* standard is not whether counsel did everything the defendant wanted, but rather whether trial “counsel's representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 687–88, 104 S. Ct. at 2064. Because a PCR petition must be based on more than mere conclusory allegations, and identify all facts supporting the grounds for relief with attached affidavits, records, or other evidence establishing the existence of those facts, § 46-21-104(1)(c), MCA, we hold Crawford fails to meet his burden to establish his trial

counsel's performance fell below an objectively reasonable standard, *Whitlow*, ¶¶ 15, 20; *Strickland*, 466 U.S. at 688–89, 104 S. Ct. at 2064–65.²

¶10 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. We affirm.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ DIRK M. SANDEFUR
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ JIM RICE

² As addressed on direct appeal, Crawford failed to prove he requested new counsel, therefore failing to implicate a “seemingly substantial” claim and need for a subsequent hearing regarding complaints about his counsel. *Crawford*, ¶ 42 (citing *State v. Happel*, 2010 MT 200, ¶ 14, 357 Mont. 390, 240 P.3d 1016). Crawford maintains he sent the District Court several “kites,” or handwritten notes or requests, requesting new counsel. However, Crawford's PCR Petition again provides no actual evidence that the District Court received or was made aware of his request for new counsel.