

DA 17-0332

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 168N

DENNIS JAY HOBBS,

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-17-88
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Dennis Jay Hobbs, self-represented, Boise, Idaho

For Appellee:

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

Steven Eschenbacher, Lake County Attorney, Polson, Montana

Submitted on Briefs: April 11, 2018

Decided: July 10, 2018

Filed:



Clerk

Justice Dirk Sandefur delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, we decide this case by memorandum opinion, which shall not be cited and does not serve as precedent. In the opinion of the Court, the case presents a question controlled by settled law and by the clear application of applicable standards of review. The 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 Dennis Jay Hobbs, appearing pro se, appeals the summary dismissal of his petition for postconviction relief by the Montana Twentieth Judicial District Court, Lake County. We affirm.

¶3 By plea agreement executed on June 26, 2014, which resolved two separate criminal proceedings, Hobbs pled guilty to two counts of sexual intercourse without consent (§ 45-5-503(1), MCA), stalking (§ 45-5-220, MCA), and witness tampering (§ 45-7-206, MCA). In exchange for Hobbs's guilty pleas, the State dismissed the charges of assault with a weapon (§ 45-5-213(1)(b), MCA) and solicitation (§ 45-4-101 and 45-5-102, MCA). The District Court further noted by hand on the agreement that the State withdrew its notice of intent to designate Hobbs as a persistent felony offender (§ 46-13-108, MCA). The District Court sentenced Hobbs to Montana State Prison (MSP) for 50 years on each count of sexual intercourse without consent, 5 years for stalking, 10 years for witness tampering,

and ordered all terms to run concurrently. The court fined Hobbs \$160,000, which was a cumulative total on all counts, and suspended imposition of each fine.¹

¶4 After this Court dismissed the appeals stemming from the two underlying prosecutions,² Hobbs filed a pro se petition for postconviction relief (PCR) and supporting memorandum on April 17, 2017, alleging violations of his constitutional rights to due process and effective assistance of counsel. *Inter alia*, Hobbs claimed the State breached its plea agreement promise to return firearms seized during the search of his home and vehicle to his father, Kayle Hobbs. Hobbs also argued that defense counsel knew the State had already handed over many of the seized weapons to agents of the Federal Bureau of Alcohol, Tobacco and Firearms (ATF), but nevertheless induced him to accept the plea agreement.

¶5 The District Court declined to forward Hobbs's petition to the Lake County Attorney or Montana Attorney General for response. Instead, the court summarily dismissed the PCR petition on April 18, 2017, on the grounds that the record, petition, and attachments failed to demonstrate any basis for Hobbs's allegations.

¶6 A PCR petition must "identify all facts supporting the grounds for relief set forth in the petition and have attached affidavits, records, or other evidence establishing the

¹ The District Court record in the underlying criminal proceedings is not before this Court on appeal of the dismissal of his postconviction petition.

² See Order, July 5, 2016, DA 14-0771, and Order, August 30, 2016, DA 14-0773. This Court dismissed both appeals submitted by Hobbs after concluding "there are no arguments with potential legal merit that could be raised on appeal," pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967) and § 46-8-103(2), MCA.

existence of those facts.” Section 46-21-104(1)(c), MCA. A district court may dismiss a PCR petition without holding an evidentiary hearing if the petition fails to satisfy the procedural threshold set forth in § 46-21-104(1)(c), MCA. *Hamilton v. State*, 2010 MT 25, ¶ 10, 355 Mont. 133, 226 P.3d 588. Additionally, a district court may dismiss a PCR petition without ordering a response if the petition, files, and records “conclusively show that the petitioner is not entitled to relief.” Section 46-21-201(1)(a), MCA. This Court reviews a district court’s denial of a PCR petition to determine whether the court’s findings of fact are clearly erroneous and whether its conclusions of law are correct. *Robinson v. State*, 2010 MT 108, ¶ 10, 356 Mont. 282, 232 P.3d 403.

¶7 On appeal, Hobbs restates his arguments before the District Court that the State breached the plea agreement and his attorney provided ineffective assistance. To bolster his claims, Hobbs attached to his pleading copies of property receipts from the Lake County Sheriff’s Office listing the guns, rifles, and ammunition seized by law enforcement from his home and vehicle; correspondence from ATF and the Lake County Sheriff’s Office; an inventory of weapons and ammunition seized by ATF; an affidavit prepared by his father, Kayle Hobbs; and a list of weapons returned by the State to Kayle Hobbs. Hobbs also attached copies of his *ex parte* correspondence with the District Court and the U.S. Department of Justice regarding the firearms in ATF possession.

¶8 The gravamen of Hobbs’s appeal is that the State violated condition #10 of the plea agreement, which states:

The Defendant shall identify, in writing, what property belongs to his father among the items seized by the State pursuant to the search warrants executed

in these matters. The State agrees to promptly return evidence belonging to the Defendant's father that has no evidentiary value in these matters, and evidence belonging to the Defendant's father that may have an evidentiary value will be returned to the Defendant's father upon the expiration of the time for the Defendant to appeal his conviction and/or sentence in these matters.

The State points out that Hobbs was aware that the ATF had seized the large cache of weapons and ammunition from his home and vehicle on May 19, 2014, weeks before Hobbs executed the June 26, 2014 plea agreement. The documents appended by Hobbs on appeal show that ATF provided written notice of its arms seizure to Hobbs, together with an inventory of the items seized and information about contesting the forfeiture in federal court. Arguing that Hobbs voluntarily executed the plea agreement knowing that the State had no control over many of the weapons that allegedly belong to his father, the State asserts that no evidence supports Hobbs's claim that the State breached condition #10 of the plea agreement.

¶9 The District Court determined that Hobbs knowingly and voluntarily entered his guilty pleas in exchange for the benefits provided by the plea agreement. We agree. We find no evidence to support Hobbs's claim that the State breached the plea agreement or that Hobbs was coerced by his attorney into signing the agreement. Nothing in the briefing or record before us indicates that the performance of defense counsel was in any way deficient or that Hobbs was prejudiced by any errors or omissions of counsel, as required by the two-pronged analysis set forth by *State v. Cobell*, 2004 MT 46, ¶¶ 14-15, 320 Mont. 122, 86 P.3d 20, and *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984).

¶10 We decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. We conclude the District Court was correct as a matter of law to summarily dismiss Hobbs's petition for failure to state a *prima facie* claim for postconviction relief.

¶11 We affirm.

/S/ DIRK M. SANDEFUR

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ JIM RICE