

DA 17-0597

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 180N

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JAMES MICHAEL STEWART,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

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APPEAL FROM: District Court of the Second Judicial District,  
In and For the County of Butte-Silver Bow, Cause No. DV-16-367  
Honorable Kurt Krueger, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

James Michael Stewart, Self-Represented; Deer Lodge, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Jonathan M. Krauss,  
Assistant Attorney General, Helena, Montana

Eileen Joyce, Butte-Silver Bow County Attorney, Ann Shea, Deputy  
County Attorney, Butte, Montana

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Submitted on Briefs: April 11, 2018

Decided: July 17, 2018

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 James M. Stewart (Stewart) appeals the denial of his petition and associated motions for post-conviction relief. We affirm.

¶3 In August 2013, Stewart was arrested in Butte-Silver Bow County for Partner Family Member Assault (PFMA). Unable to post bond, Stewart remained in the Butte-Silver Bow County jail. On January 23, 2014, Stewart pled guilty to PFMA. Stewart's attorney then filed a motion to withdraw, Stewart filed a motion to withdraw his plea and filed a petition for habeas corpus, and Stewart's new counsel filed a motion to withdraw the guilty plea. The District Court granted Stewart's attorney's motion to withdraw, denied the other motions, and set the case for sentencing. On November 19, 2015, Stewart was sentenced to five years at the Montana State Prison. Stewart appealed the conviction and sentence, which this Court dismissed with prejudice based on Stewart's voluntary motion asserting he did "not wish to continue." *State v. Stewart*, No. DA 16-0091. Or. (Mont., Sept. 16, 2016).

¶4 Stewart then filed, in the District Court, a petition for post-conviction relief asserting three grounds for relief: ineffective assistance of counsel, judicial misconduct,

and deliberate indifference. On August 9, 2017, the District Court determined Stewart had either waived his right to or failed to provide a sufficient basis to support his judicial misconduct claim, that his deliberate indifference claim was not appropriate for post-conviction relief, and that he had failed to prove he was entitled to relief regarding his ineffective assistance of counsel claim because it was based on conclusory statements. Stewart appeals.

¶5 We review denial of a petition for post-conviction relief to determine whether the district court's findings of fact are clearly erroneous and whether its conclusions of law are correct. *Whitlow v. State*, 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861. Claims of ineffective assistance of counsel must be grounded in facts and not merely conclusory allegations. *State v. Finley*, 2002 MT 288, ¶ 9, 312 Mont. 493, 59 P.3d 1132.

¶6 On appeal, Stewart presents two issues not raised below—sentencing delay and the denial of a prejudgment motion to withdraw his guilty plea. Postconviction claims not raised before the district court cannot be raised for the first time with this Court on appeal. *Sanders v. State*, 2004 MT 374, ¶ 14, 325 Mont. 59, 103 P.3d 1053. As Stewart did not previously raise the claims of a sentencing delay and the denial of his motion to withdraw his guilty plea, we will not consider them here. Moreover, we are unable to review the district court's decision when the appellant abandons certain claims on appeal. *Ford v. State*, 2005 MT 151, ¶ 35, 327 Mont. 378, 114 P.3d 244. Stewart has failed to assert his claims of judicial misconduct and deliberate indifference on appeal, and thus has abandoned these claims.

¶7 Stewart’s claim of ineffective assistance of appellate counsel was not presented to the District Court. Again, because we do not address issues raised for the first time on appeal, we decline to address this issue. *Ford*, ¶ 35. Finally, with regard to Stewart’s claim of ineffective assistance of trial counsel, the District Court properly denied that claim, ruling that Stewart failed to assert sufficient facts regarding his bond status and instead asserted only conclusory and unsupported statements. The District Court noted that Stewart’s attorney had filed a motion for release without bond and that the District Court denied the motion following a hearing. Claims of ineffective assistance of counsel “must be grounded on facts in the record and not on mere conclusory allegations.” *State v. Lehrkamp*, 2017 MT 203, ¶ 26, 388 Mont. 295, 400 P.3d 697.

¶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/ INGRID GUSTAFSON

/S/ DIRK M. SANDEFUR

/S/ JIM RICE