

DA 17-0625

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 179N

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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 Thirteenth Judicial District,  
In and For the County of Yellowstone, Cause No. DV 17-0422  
Honorable Mary Jane Knisely, 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

Scott Twito, Yellowstone County Attorney, Robert Spoja, Deputy County  
Attorney, Billings, Montana

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Submitted on Briefs: May 30, 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 Stewart was arrested on August 3, 2013, after leading officers on a high-speed chase in Yellowstone County. Stewart was charged with five crimes; he posted bond and was released. Nine days later, Stewart was arrested in Butte-Silver Bow County for Partner or Family Member Assault (PFMA). Unable to post bond, Stewart remained in the Butte-Silver Bow County jail. On April 21, 2015, a Yellowstone County jury found Stewart guilty of operating a motor vehicle with an alcohol concentration of 0.08% or higher, a felony, in violation of § 61-8-406, MCA, and the misdemeanor offense of eluding a peace officer. He was designated a persistent felony offender (PFO), and sentenced to ten years in the Montana State Prison with five years suspended. Stewart appealed, arguing he was denied a speedy trial; this Court affirmed his conviction. *State v. Stewart*, 2017 MT 32, 386 Mont. 315, 389 P.3d 1009.

¶4 Stewart then filed a petition for post-conviction relief in which he asserted three grounds for relief in the District Court. Stewart filed numerous other motions or

supporting documents over the next few months regarding his claims. Ultimately, Stewart asserted claims for post-conviction relief on five subjects: 1) ineffective assistance of counsel, 2) speedy trial violation, 3) failure to withdraw guilty plea, 4) misapplication of PFO sentencing statutes, and 5) miscalculation of credit for time served prior to sentencing. The District Court denied the claims without a hearing.

¶5 On appeal, Stewart's issues can be boiled down to two arguments. He asserts his counsel was ineffective for failing to object to what he perceives to have been an illegal sentence. He argues his sentence with regard to Count III, Operation of a Motor Vehicle by a Person with alcohol Concentration of 0.08% or More, to ten (10) years to the Montana State Prison with five (5) years suspended, does not comport with § 61-8-731, MCA. And, he raises a new claim of a constitutionally infirm prior DUI conviction.

¶6 A postconviction claim that could have been raised in the district court cannot be raised for the first time on appeal. *State v. Sanders*, 2004 MT 374, ¶ 14, 325 Mont. 59,103 P.3d 1053. Stewart did not raise his claim of a constitutionally infirm prior DUI in the District Court, and therefore we will not consider it.

¶7 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.

¶8 With regard to Stewart's claim of an illegal sentence, it appears he misapprehends PFO designation and its sentencing implications. PFO designation is a mandatory

sentencing enhancement which is applicable to sentencing in felony DUIs. *State v. Kime*, 2013 MT 14, ¶¶ 13-16, 368 Mont. 261, 295 P.3d 580. The District Court properly found Stewart met the definition of a PFO under § 46-18-501, MCA (1977), and the court was bound by § 46-18-502, MCA, to sentence him as a PFO. The sentence imposed by the District Court was legal. Therefore, counsel's failure to object to the valid, legal sentence imposed was not ineffective assistance of counsel.

¶9 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.

¶10 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON  
/S/ INGRID GUSTAFSON  
/S/ BETH BAKER  
/S/ DIRK M. SANDEFUR