

DA 18-0172

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 225N

---

URIEL J. ORTEGA,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

---

APPEAL FROM: District Court of the Twenty-Second Judicial District,  
In and For the County of Big Horn, Cause No. DV 18-09  
Honorable Blair Jones, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Uriel J. Ortega, Self-Represented, Herlong, California

For Appellee:

Timothy C. Fox, Montana Attorney General, Tammy A. Hinderman,  
Assistant Attorney General, Helena, Montana

Gerald "Jay" Harris, Big Horn County Attorney, Hardin, Montana

---

Submitted on Briefs: August 15, 2018

Decided: September 11, 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 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 Uriel J. Ortega appeals from the Order of the Twenty-Second Judicial District, Big Horn County, denying Ortega's Petition for Postconviction Relief. We affirm.

¶3 On May 14, 2013, Ortega pled guilty to felony Criminal Possession of Dangerous Drugs, in violation of § 45-9-102, MCA, and was sentenced to time served (approximately 273 days). On May 30, 2013, the District Court entered a written judgment. Ortega did not appeal his conviction or sentence. Upon expiration of his time for appeal, Ortega's conviction became final no later than July 29, 2013. *See* M. R. App. P. 4(5)(b). On February 1, 2018, four and a half years later, Ortega filed a pro se Petition for Postconviction Relief (PCR), asserting claims of ineffective assistance of counsel. He argued that counsel (1) failed to conduct any meaningful investigation into the facts of his case; (2) failed to adequately consult and communicate with Ortega; and (3) failed to provide Ortega with discovery material, instead inducing Ortega to plead guilty to a felony offense, when he was only guilty of a misdemeanor offense. The District Court summarily denied the Petition, concluding that by pleading guilty "Ortega waived his right to allege ineffective assistance of counsel and is barred from raising the issue now." Ortega appeals.

¶4 We review a district court’s denial of a PCR petition to determine whether the district court’s findings of fact are clearly erroneous and whether its conclusions of law are correct. *Wilkes v. State*, 2015 MT 243, ¶ 9, 380 Mont. 388, 355 P.3d 755; *Whitlow v. State*, 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861. Ineffective assistance of counsel claims are mixed questions of law and fact that we review de novo. *Whitlow*, ¶ 9. This Court may affirm a district court’s decision where the district court reached the right result but for a wrong reason. *State v. Ellison*, 2012 MT 50, ¶ 8, 364 Mont. 276, 272 P.3d 646; *see also State v. Christensen*, 2014 MT 295, ¶ 12, 377 Mont. 7, 338 P.3d 45.

¶5 Although a defendant waives all non-jurisdictional defects and defenses, including prior constitutional rights violations upon entry of a voluntary and knowing guilty plea, a defendant does not waive the right to challenge the entry of his plea based on claims of ineffective assistance of counsel. *See State v. Watts*, 2016 MT 331, ¶ 9, 386 Mont. 8, 385 P.3d. 960; *State v. Duff*, 262 Mont. 288, 292, 865 P.2d 238, 240 (1993). A PCR petition “may be filed at any time within [one] year of the date that the conviction becomes final.” Section 46-21-102(1), MCA.

¶6 Here, Ortega asserts that counsel’s deficient performance induced him to plead guilty and that but for this ineffective assistance of counsel he would not have pled guilty. These claims attack the validity of Ortega’s guilty plea and are not waived by entry of Ortega’s guilty plea. *See Watts*, ¶ 9. The District Court’s determination that Ortega’s claims regarding his guilty plea were waived was in error. This error notwithstanding, because Ortega’s conviction became final no later than July 29, 2013, he had to file his petition on or before July 29, 2014 to avoid it from being time barred.

*See* § 46-21-102(1), MCA. He failed to do so. Thus, the District Court’s denial of Ortega’s Petition was correct, albeit for the wrong reason. *See Ellison*, ¶ 8.

¶7 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. We affirm.

/S/ JAMES JEREMIAH SHEA

We concur:

/S/ MIKE McGRATH  
/S/ LAURIE McKINNON  
/S/ JIM RICE  
/S/ INGRID GUSTAFSON