

DA 17-0622

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 13N

STEPHEN DOUGLAS ALLISON,
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 Sanders, Cause No. DV-17-76
Honorable James A. Manley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Stephen D. Allison, Self-Represented, Deer Lodge, Montana

For Appellee:

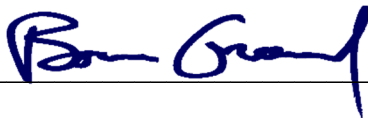
Timothy C. Fox, Montana Attorney General, Madison L. Mattioli, Assistant
Attorney General, Helena, Montana

Robert L. Zimmerman, Sanders County Attorney, Thompson Falls,
Montana

Submitted on Briefs: December 5, 2018

Decided: January 15, 2019

Filed:



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 Stephen Douglas Allison appeals the Order of the Twentieth Judicial District Court, Sanders County, dismissing his Petition for Postconviction Relief (PCR). We affirm.

¶3 On March 22, 1988, Allison pled guilty to two counts of sexual assault, a felony, in violation of § 45-5-502, MCA. On Count I, Allison was sentenced to twenty years at Montana State Prison (MSP), with no time suspended. On Count II, Allison was sentenced to twenty years at MSP, with twenty years suspended, to run consecutively to Count I.

¶4 On April 24, 2007, the District Court revoked Allison's suspended sentence on Count II because of sex crimes he committed in Oregon. The District Court resentenced Allison to twenty years at MSP, with ten years suspended. Allison appealed this sentence, and we concluded that Allison's sentence was legal and that he was not entitled to any additional credit for time served.¹

¶5 On June 10, 2015, the State filed a Petition to Revoke Allison's suspended ten-year sentence on Count II. The State alleged Allison violated a condition of his suspended sentence that prohibited him from having contact with any males or females under the age

¹ *State v. Allison*, 2008 MT 305, ¶ 15, 346 Mont. 6, 192 P.3d 1135.

of eighteen. On July 14, 2015, the District Court held a revocation hearing on the State's Petition, determined Allison violated the condition, and ordered his suspended sentence revoked. On October 13, 2015, the District Court resentenced Allison to serve the remaining ten years of his suspended sentence at MSP. On December 15, 2015, Allison appealed the District Court's decision, and on March 28, 2017, we granted the parties' stipulation to dismiss that appeal with prejudice.²

¶6 On June 13, 2017, Allison filed a PCR Petition, alleging ineffective assistance of counsel, double jeopardy violations, and Eighth Amendment violations at MSP following revocation of his previously-suspended sentence. On September 25, 2017, the District Court dismissed Allison's PCR Petition, determining that it failed to state any facts, but merely conclusions of fact or law. Allison appeals.

¶7 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. *Wilkes v. State*, 2015 MT 243, ¶ 9, 380 Mont. 388, 355 P.3d 755. Ineffective assistance of counsel claims are mixed questions of law and fact that we review de novo. *Whitlow v. State*, 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861. We review discretionary rulings, including rulings on whether to hold an evidentiary hearing, for an abuse of discretion. *Wilkes*, ¶ 9.

¶8 A person found guilty of an offense in a court of record, who has no adequate remedy of appeal, and claims that their suspended sentence was improperly revoked may petition the court that imposed the sentence to vacate, set aside, or correct the revocation

² Or. Granting Stip. Mot. to Dismiss Appeal, *State v. Allison*, No. DA 15-0779 (Mont. March 28, 2017).

order. Section 46-21-101(1), MCA. Where a petitioner has previously brought a direct appeal, grounds for relief that could reasonably have been raised on direct appeal may not be raised in a PCR proceeding. Section 46-21-105(2), MCA. We have consistently applied this statutory bar to “prevent the abuse of postconviction relief by criminal defendants who would substitute those proceedings for direct appeal” *Kills On Top v. State*, 273 Mont. 32, 60, 901 P.2d 1368, 1386 (1995).

¶9 A PCR petition must identify all facts that support the claims for relief and must be based on more than a petitioner’s own conclusory statements. Section 46-21-104(1)(c), MCA; *Kelly v. State*, 2013 MT 21, ¶ 9, 368 Mont. 309, 300 P.3d 120. The petition must be “accompanied by supporting memorandum, including appropriate arguments and citations and discussion of authorities.” Section 46-21-104(2), MCA. The district court may dismiss a petition where the petition and supporting memorandum fail to present a prima facie postconviction claim. Section 46-21-201(1)(a), MCA.

¶10 Allison’s double jeopardy claim was waived because it could have reasonably been raised in his direct appeal. *See* § 46-21-105(2), MCA; *Kills On Top*, 273 Mont. at 60, 901 P.2d at 1386. Allison’s Petition fails to identify any facts supporting a claim of ineffective assistance of counsel. *See* § 46-21-104(1)(c), MCA. Allison’s Petition is based on his own conclusory statements and does not present any prima facie postconviction claims. *See* § 46-21-104(1)(c), MCA; 46-21-104(2), MCA; *Kelly*, ¶ 9. The District Court did not err in dismissing Allison’s Petition. *See* § 46-21-201(1)(a), *Wilkes*, ¶ 9.

¶11 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/ INGRID GUSTAFSON
/S/ LAURIE McKINNON
/S/ JIM RICE