

DA 18-0427

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 242N

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TERRY D. PARKS,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

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APPEAL FROM: District Court of the Fourth Judicial District,  
In and For the County of Missoula, Cause No. DV-16-404  
Honorable Karen Townsend, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Terry D. Parks, Self-represented, Wayland, Michigan

For Appellee:

Timothy C. Fox, Montana Attorney General, Katie F. Schulz, Assistant  
Attorney General, Helena, Montana

Kirsten H. Pabst, Missoula County Attorney, Dan Stusek, Special Deputy  
Missoula County Attorney, Missoula, Montana

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Submitted on Briefs: September 4, 2019

Decided: October 8, 2019

Filed:

  
Clerk

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Justice Ingrid Gustafson 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 Terry D. Parks appeals from the order of the Fourth Judicial District Court, Missoula County, denying his Amended Original Petition for Post Conviction Relief. This is the fourth appeal from Parks to this Court in relation to his 2011 conviction under § 30-10-301(1)(b), MCA.<sup>1</sup> Parks raises seven issues in this appeal: (1) whether the District Court wrongly dismissed his petition for postconviction relief; (2) whether his conviction violated his due process rights because § 30-10-301(1), MCA, is not an absolute liability offense and the District Court failed to give a jury instruction for a "willful" mental state; (3) whether this Court has correctly interpreted the mental state of "willfully" in regard to § 30-10-306(1), MCA; (4) whether the notes at issue in his underlying case met the definition of securities under the statute; (5) whether he was denied effective assistance of counsel; (6) whether cumulative alleged errors in his case require reversal of his conviction; and (7) whether his sentence was illegal.

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<sup>1</sup>See *State v. Parks*, 2013 MT 280, 372 Mont. 88, 310 P.3d 1088; *State v Parks*, 2015 MT 32N, 378 Mont. 538, 348 P.3d 671; *Parks v. Mont. Fourth Judicial Dist. Court*, No. OP 18-0136, 391 Mont. 539, 414 P.3d 761 (table) (Mar. 20, 2018).

¶3 We review the denial of a petition for postconviction relief to determine whether the court’s findings of fact are clearly erroneous and if its conclusions of law are correct. *Lacey v. State*, 2017 MT 18, ¶ 13, 386 Mont. 204, 389 P.3d 233. Ineffective assistance of counsel claims are mixed questions of law and fact that we review de novo. *Lacey*, ¶ 13.

¶4 Postconviction proceedings are limited proceedings that are governed by the statutory requirements in Title 46, chapter 21, MCA. *See Lacey*, ¶ 15. Section 46-21-104, MCA, lays out specific requirements for the contents of the petition. A petition for postconviction relief must include a supporting memorandum with appropriate legal arguments, citations, and discussion of authorities. Section 46-21-104(2), MCA. The District Court appropriately dismissed all claims not accompanied by such a memorandum of law (Issue 1).

¶5 A petition for postconviction relief may not raise, and a court reviewing such petition may not consider or decide any “grounds for relief that were or could reasonably have been raised on direct appeal.” Section 46-21-105(2), MCA. The District Court properly dismissed all claims that were or could reasonably have been raised on direct appeal (Issues 1, 2, 3, 4, 6, 7).

¶6 A claim of ineffective assistance of counsel requires that a petitioner show “counsel’s performance was deficient” and “the deficient performance prejudiced the” petitioner. *Lacey*, ¶ 23 (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)). To demonstrate the representation was deficient, the petitioner “must show that counsel’s representation fell below an objective standard of reasonableness.”

*Lacey*, ¶ 24 (quoting *Whitlow v. State*, 2008 MT 140, ¶ 14, 343 Mont. 90, 183 P.3d 861). “There is a strong presumption that the attorney’s performance fell within the wide range of reasonable professional assistance.” *State v. Llamas*, 2017 MT 155, ¶ 26, 388 Mont. 53, 402 P.3d 611. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, *viewed as of the time of counsel’s conduct.*” *Lacey*, ¶ 28 (emphasis and alteration in original) (quoting *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066). Thus, a “petitioner cannot rely on subsequently decided case law to render an attorney’s conduct ineffective at the time of trial.” *Lacey*, ¶ 28 (quoting *Foston v. State*, 2010 MT 281, ¶ 12, 358 Mont. 469, 245 P.3d 1103). The District Court addressed each of the complaints Parks raised against his trial counsel and determined Parks had not shown that his counsel’s conduct fell below an objective standard of reasonableness. Based on our review of the record, the District Court properly determined that Parks’ claims of ineffective assistance of counsel failed (Issue 5).

¶7 Finally, we decline to consider issues Parks raises for the first time on this appeal. *State v. Taylor*, 2010 MT 94, ¶ 12, 356 Mont. 167, 231 P.3d 79. “Failure to make a timely objection during trial constitutes a waiver of the objection except” in limited circumstances not applicable here. *See* §§ 46-20-104, -701, MCA (Issues 6, 7).

¶8 The District Court’s order is well-reasoned, thorough, and supported by the record. Given the limited scope of postconviction relief proceedings, there is no basis in either law or fact to overturn the District Court’s judgment in this matter.

¶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/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH

/S/ JIM RICE

/S/ JAMES JEREMIAH SHEA

/S/ DIRK M. SANDEFUR