DA 18-0430

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 211N

JOSEPH PARANTEAU,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. ADV-18-092
Honorable Gregory G. Pinski, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Joseph Paranteau, Self-Represented, Shelby, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, C. Mark Fowler, Assistant Attorney General, Helena, Montana

Joshua A. Racki, Cascade County Attorney, Amanda Lofink, Deputy County Attorney, Great Falls, Montana

Submitted on Briefs: June 26, 2019

Decided: September 3, 2019

Filed:

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 Joseph Paranteau appeals from an order of the Eighth Judicial District Court, Cascade County, denying his petition for postconviction relief. We affirm.

¶3 On May 28, 2015, the State charged Paranteau with incest, a felony, in violation of § 45-5-507, MCA, for touching his ten-year-old step-daughter's vagina with his hand on several occasions. Paranteau claims he played a game with his step-daughter where he would throw her onto a couch by cradling her chest and placing his hand on her crotch and sometimes his finger would accidentally slip inside her underwear. Paranteau pleaded not guilty. Attorneys for the State and Paranteau negotiated a plea agreement, in which Paranteau agreed to plead guilty to assaulting a minor and to a five-year commitment to the Department of Corrections, with three years suspended. The District Court rejected the plea agreement. In a subsequent plea agreement, Paranteau agreed to plead guilty to criminal endangerment, a felony, in violation of § 45-5-207, MCA, which the District Court accepted.[1] On May 25, 2017, the District Court sentenced Paranteau to ten years at the Montana State Prison.

[1] The District Court noted in the sentencing order that the underlying allegations established the crime of incest.

¶4 On February 13, 2018, Paranteau filed a petition for postconviction relief arguing that: (1) the District Court committed perjury; (2) he lacked the requisite mental state to be convicted of criminal endangerment; and (3) the prosecution violated the grand jury clause of the Fifth Amendment of the United States Constitution. On May 21, 2018, the District Court denied Paranteau's Motion for Substitution of Judge stating Paranteau alleged no facts of personal bias or prejudice, and no right of substitution exists in postconviction cases. *See* §§ 3-1-804, -805, MCA. The same day, the District Court denied Paranteau's petition for postconviction relief stating the petition "lacks supporting evidence and is meritless." Paranteau appeals.

¶5 This Court reviews a district court's denial of a petition for postconviction relief to determine whether that court's findings are clearly erroneous and whether its conclusions of law are correct. A petitioner seeking to reverse a district court's denial of a petition for postconviction relief "bears a heavy burden." *Mascarena v. State*, 2019 MT 78, ¶ 4, 395 Mont. 245, 438 P.3d 323 (internal citations omitted).

¶6 Pursuant to § 46-21-104(1), MCA, a petition for postconviction relief must:

> (a) identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations;
>
> (b) identify any previous proceedings that the petitioner may have taken to secure relief from the conviction; and
>
> (c) identify all facts supporting the grounds for relief set forth in the petition and have attached affidavits, records, or other evidence establishing the existence of those facts.

Additionally, the petition must be accompanied by a supporting memorandum, including appropriate arguments and citations and discussion of authorities. Section 46-21-104(2),

MCA. It is well-established that this Court will not address either an issue raised for the first time on appeal or a party's change in legal theory. *State v. Wetzel*, 2005 MT 154, ¶ 13, 327 Mont. 413, 114 P.3d 269.

¶7 On appeal, Paranteau argues: (1) the District Court should have substituted the judge for postconviction proceedings; (2) the District Court exhibited bias toward Paranteau; (3) thirteen years prior, the District Court violated Paranteau's double jeopardy rights by raising Paranteau's bond to $50,000 for a felony; (4) the District Court erred by not accepting Paranteau's original plea agreement and sentence; (5) the District Court erred by ignoring Paranteau's motion to withdraw his guilty plea; (6) the District Court erred by sentencing Paranteau to complete treatment unrelated to the charge of criminal endangerment; (7) the District Court committed perjury; (8) Paranteau lacked the requisite mental state to be convicted of criminal endangerment; (9) the District Court violated Paranteau's due process rights; (10) the District Court erred by changing its statements throughout the proceeding; (11) the District Court erred by failing to hold a hearing before filing the information; and (12) the District Court erred by failing to offer Paranteau assistance of counsel for his postconviction proceeding.

¶8 This Court will not consider the issues raised by Paranteau for the first time on appeal. *See Wetzel*, ¶ 13. Furthermore, this Court will not consider the issues raised by Paranteau in his petition that do not comply with the requirements of § 46-21-104, MCA. As such, this Court consolidates the issues preserved on appeal and considers only whether the District Court committed perjury or was biased against Paranteau, and

whether Paranteau lacked the requisite mental state to be convicted of criminal endangerment.

¶9 Paranteau asserts that the District Court's remarks at Paranteau's sentencing hearing, allegedly referring to him as a "drug dealing street thug that collects his drug debts with a gun," amount to bias against him and perjury. In its sentencing order, the District Court writes, "Defendant is a street thug." The District Court dismissed this claim, stating that the court's statements were not lies, but related to Paranteau's prior charge of Assault with a Weapon, and Paranteau alleged no facts supporting a personal bias against him.

¶10 A fair trial in a fair tribunal is a basic requirement of due process. *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 625 (1955). While it is true that the United States Constitution requires judicial recusal in cases where the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable, "judicial rulings alone almost never constitute a valid basis for a bias or impartiality motion." *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 1464 (1975); *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994). Opinions formed by the judge based on facts introduced in the course of the proceedings, or of prior proceedings, do not constitute a basis for bias unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. *Liteky*, 510 U.S. at 555, 114 S. Ct. at 1157. Moreover, a judge's ordinary efforts at courtroom administration, including "expressions of impatience, dissatisfaction, annoyance, and even anger," do not establish bias or partiality. *Liteky*, 510 U.S. at 555-56, 114 S. Ct. at 1157.

¶11 Our review of the record, including the pre-sentence investigation report, evidences Paranteau's prior methamphetamine use, assaultive behavior, and felony convictions for aggravated assault and assault with a weapon. As such, the District Court's statements noting Paranteau's prior convictions and status as a registered violent offender did not amount to bias such that this Court should reverse the District Court's denial of Paranteau's petition for postconviction relief. The statements made by the District Court were not perjurious because they were rooted in truth. In sum, Paranteau's conclusory statements claiming bias and perjury are unsubstantiated and unsupported by the facts and the law.

¶12 Notwithstanding that Paranteau pleaded guilty to the charge, Paranteau next asserts he did not knowingly engage in conduct that could cause risk of death or serious injury to another and therefore should not have been charged with criminal endangerment. Pursuant to § 45-5-207, MCA, a "person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment." Paranteau claims he was "playing" with his step-daughter and would not have characterized his actions as "'playing' if he was intentionally trying to hurt her." The Court is unpersuaded by this argument. To satisfy the mens rea for criminal endangerment, it does not matter whether Paranteau intended to cause his step-daughter's death or serious bodily injury, but whether he knew the likelihood that his conduct could do so. The District Court correctly concluded that Paranteau knowingly engaged in the action of picking up the minor child, throwing her onto a couch, and touching her vagina while doing so.

¶13 Furthermore, Paranteau pleaded guilty to criminal endangerment and confessed to committing the crime at his allocution. At a February 9, 2017 change-of-plea hearing, Paranteau stated:

> By [throwing her] I could have seriously injured her or broken her arm. She could have landed on her head or seriously injured her spine, or I could have dropped her. If I had dropped her, she could have, being a small child, she could have been seriously injured—on several occasions—on several occasions [she] went in her room after playing this game.

The following conversation between the District Court and Paranteau then occurred:

> The COURT: Now you made a statement to me that you did not knowingly touch her genitals; is that right?
> THE DEFENDANT: Right.
> THE COURT: What do you mean by that? You've used the legal word there, and I want to know what your understanding of it is.
> THE DEFENDANT: Because that's what you asked me. If I didn't—I'd just pick her up and play, throw her across the room. But onto the beanbag and onto the couch.
> THE COURT: Okay. You knew how you were picking her up; is that right?
> THE DEFENDANT: I'd just pick her up. I'd just pick her up.
> THE COURT: But you knew that you were doing that; right?
> THE DEFENDANT: Yes, picking her up. Yes. Yes, Your Honor.

The District Court then asked Paranteau how he wished to plead, to which Paranteau responded, "Guilty." Based on the factual admissions made by Paranteau, the District Court properly found that Paranteau knowingly, intelligently, and voluntarily entered his guilty plea to the crime of criminal endangerment.

¶14 Paranteau's claims that the District Court was biased and committed perjury against him are meritless, and Paranteau's plea admitted to actions satisfying the elements necessary to convict him of criminal endangerment. Accordingly, the District Court correctly denied Paranteau's petition for postconviction relief.

¶15 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.

¶16 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ JIM RICE
/S/ DIRK M. SANDEFUR