

DA 18-0704

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 283N

BRIAN NAUMAN,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DV 18-058C
Honorable Heidi Ulbricht, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Brian Nauman, Self-Represented, Missoula, Montana

For Appellee:

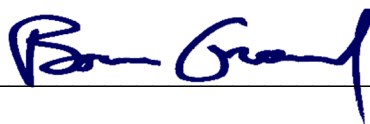
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Submitted on Briefs: October 30, 2019

Decided: December 3, 2019

Filed:



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 Brian Nauman appeals an Eleventh Judicial District Court order denying his petitions for postconviction relief. We affirm.

¶3 In January 2001, Nauman was convicted of felony Sexual Assault (DC 99-063). On March 6, 2001, the court entered written judgment. Nauman did not appeal his conviction,¹ but instead, beginning in 2003, filed numerous postconviction pleadings in district court, federal court, and this Court, challenging his conviction and denial of parole. *See, e.g., Nauman v. State*, No. OP 13-0061, 369 Mont. 540, 310 P.3d 1098 (table) (Feb. 12, 2013) (*Nauman I*). All his petitions were denied. In 2011, the State filed a petition to revoke Nauman's suspended sentence for violating conditions of his sentence. In February 2012, Nauman filed motions to suppress evidence obtained by his probation officer. The District Court denied the motions, revoking Nauman's suspended sentence. Nauman appealed. On July 21, 2014, this Court affirmed the District Court. *State v. Nauman*, No. DA 13-0010, 2014 MT 171N, ¶ 10, 2014 Mont. LEXIS 402 (*Nauman II*).

¹ Because Nauman did not appeal his conviction, his judgment became final on May 7, 2001. Section 46-21-102(1)(a), MCA.

¶4 Also, in 2011, the State charged Nauman in District Court with Failure to Register as a Sexual Offender (DC 11-403), a felony. Nauman entered an *Alford* plea pursuant to a plea agreement with the State, recommending Nauman for three years to the Department of Corrections. The court accepted the plea in a plea hearing; however, the court sentenced Nauman to three years in the Montana State Prison. On appeal, we reversed the judgment and remanded to the District Court with instructions to enter a sentence consistent with the plea agreement or allow Nauman to withdraw his guilty plea. *State v. Nauman*, 2014 MT 248, ¶ 27, 376 Mont. 326, 334 P.3d 368 (*Nauman III*). Nauman moved to withdraw his guilty plea, which the District Court denied as untimely. Nauman filed a motion to reconsider. On October 23, 2014, the District Court filed a Second Amended Judgment and Sentence in which it sentenced Nauman in accordance with the plea agreement. Nauman did not appeal the judgment.² On November 28, 2014, the District Court filed an Order and Rationale concluding, based on the date of filing of the Second Amended Judgment, that Nauman's motion to withdraw his guilty plea was timely, but that he failed to establish good cause to withdraw his plea because his *Alford* plea was knowing and voluntary. Nauman appealed. On October 25, 2016, we affirmed the District Court decision. *State v. Nauman*, No. DA 14-0812, 2016 MT 275N, ¶ 11, 2016 Mont. LEXIS 930 (*Nauman IV*).

¶5 On January 24, 2018, Nauman filed a pro se petition for postconviction relief for both cause numbers. The District Court concluded that Nauman's postconviction petition

² Because Nauman did not appeal the judgment, his conviction became final 60 days later, December 22, 2014, pursuant to § 46-21-102(1)(a), MCA.

for DC 99-063 was time-barred by the Montana Post-Conviction Hearing Act one-year statute of limitations.³ The court further concluded that Nauman's petition for DC 11-403 was timely filed, basing the statute of limitations as commencing 90 days following this Court's October 2016 decision on Nauman's motion to withdraw his guilty plea. However, the District Court denied Nauman's petition for failure to state a claim for relief. Nauman appeals the District Court's dismissal of his petition for postconviction relief for both cause numbers.⁴

¶6 We review a district court's denial of postconviction relief to determine whether the court's findings of fact are clearly erroneous and whether its conclusions of law are correct. *State v. Placzkiewicz*, 2001 MT 254, ¶ 10, 307 Mont. 189, 36 P.3d 934. We review a lower court's discretionary ruling in postconviction relief proceedings for an abuse of discretion. *State v. Price*, 2006 MT 79, ¶ 17, 331 Mont. 502, 134 P.3d 45.

¶7 When a defendant does not file a direct appeal, his conviction becomes final upon expiration of his time for filing. *Daniels*, ¶ 11. A petitioner must file a petition for postconviction relief within one year of the date his conviction became final. Section 46-21-102(1), MCA. The statute does not allow for tolling of the one-year time period

³ The District Court based the one-year statute of limitations as commencing 90 days following this Court's July 21, 2014 order affirming the District Court's revocation of Nauman's suspended sentence when the time for filing a writ of certiorari with the United States Supreme Court expired.

⁴ On appeal, Nauman argues that the District Court did not have subject matter jurisdiction of DC 99-063. Both jurisdictional and nonjurisdictional claims are subject to the time limitations in § 46-21-102, MCA. *State v. Daniels*, 2005 MT 110, ¶ 12, 327 Mont. 78, 111 P.3d 675. Furthermore, pursuant to Article VII, Section 4, of the Montana Constitution, the District Court had jurisdiction of Nauman's felony criminal offense.

by filing a motion to withdraw a guilty plea after the one-year time period begins to run. *Peterson v. State*, 2017 MT 165, ¶ 11, 388 Mont. 122, 398 P.3d 259.

¶8 Nauman did not directly appeal either charge. Consequently, DC 99-063 became final on May 7, 2001, and DC 11-403 became final on December 22, 2014. *Daniels*, ¶ 11. Nauman had one year from these dates, pursuant to § 46-21-102(1), MCA, to file a petition for postconviction relief.⁵ Accordingly, Nauman's petitions, filed in January 2018, are time-barred.⁶ The District Court did not err in denying Nauman's petitions for postconviction relief.

¶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/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ JIM RICE

/S/ INGRID GUSTAFSON

⁵ The District Court incorrectly calculated the one-year statute of limitations for DC 99-063 based on Nauman's appeal of his suppression motion filed in a revocation proceeding. *See Daniels*, ¶ 11. Even using the incorrect date, Nauman's petition is time-barred.

⁶ The District Court incorrectly calculated the date on which DC 11-403 became final, thus erroneously concluding that the petition was timely. *See Peterson*, ¶ 14. Nonetheless, the District Court denied Nauman's petition for failure to state a claim for relief. We will affirm the District Court when it reaches the right result for the wrong reason. *State v. Ellison*, 2012 MT 50, ¶ 8, 364 Mont. 276, 272 P.3d 646.