

DA 20-0274

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 300N

LARRY B. DANIELS,

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 Carbon, Cause No. DV 19-101
Honorable Matthew J. Wald, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Larry B. Daniels, Self-Represented, Deer Lodge, Montana

For Appellee:


Timothy C. Fox, Montana Attorney General, Jonathan M. Krauss, Assistant
Attorney General, Helena, Montana

Alex R. Nixon, Carbon County Attorney, Red Lodge, Montana

Submitted on Briefs: October 7, 2020

Decided: November 24, 2020

Filed:


Clerk

Justice Laurie McKinnon 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 Larry B. Daniels, representing himself, appeals from an order entered in the Twenty-Second Judicial District Court, Carbon County, denying Daniels' petition for postconviction relief. We affirm.

¶3 On May 21, 2009, Daniels, after a physical altercation, shot and killed his adult son, Buddy. In 2010, a jury convicted Daniels of deliberate homicide. The District Court sentenced Daniels to 60 years in Montana State Prison, with a condition that he be ineligible for parole for 20 years. Daniels pursued a direct appeal of his conviction with this Court in 2011 arguing that the District Court erred in admitting character evidence regarding Buddy and prohibiting his defense of justifiable use of force. This Court affirmed Daniels' conviction. *See State v. Daniels*, 2011 MT 278, 362 Mont. 426, 265 P.3d 623. In 2012, Daniels filed a petition for postconviction relief, which was denied by the District Court and affirmed by this Court in 2014. *See Daniels v. State*, 2014 MT 92N, 375 Mont. 551, 346 P.3d 1132. Daniels filed the instant petition for postconviction relief on September 25, 2019, which the District Court denied. Daniels appeals.¹

¹ Also, before this Court is Daniels' motion for default judgment, which he filed on August 17, 2020. In this motion, Daniels argues the State failed to timely file an answer brief.

¶4 This Court reviews a district court’s denial of a petition for postconviction relief to determine whether its findings of fact are clearly erroneous and whether its legal conclusions are correct. *Rose v. State*, 2013 MT 161, ¶ 15, 370 Mont. 398, 304 P.3d 387. Petitions for postconviction relief are prescribed by statute and are civil in nature. *Coleman v. State*, 194 Mont. 428, 433, 633 P.2d 624, 627 (1981). A petitioner for postconviction relief has the burden of proving by a preponderance of the evidence that he or she is entitled to relief. *Herman v. State*, 2006 MT 7, ¶ 44, 330 Mont. 267, 127 P.3d 422. In doing so, the petitioner must “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.” Section 46-21-104(1)(c), MCA. A petition for postconviction relief may be filed within one year of the conviction becoming final. Section 46-21-102(1), MCA. A conviction becomes final for the purpose of postconviction relief when “(a) the time for appeal to the Montana supreme court expires; (b) if an appeal is taken to the Montana supreme court, when the time for petitioning the United States supreme court for review expires; or (c) if review is sought in the United States supreme court, on the date that the court issues its final order in the case.” Section 46-21-102(1)(a)-(c), MCA. The only exception to the one-year limit is when the postconviction petition, “alleges the existence of newly discovered evidence that, if proved and viewed in light of the evidence as a whole would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted.” Section 46-21-102(2), MCA.

Our resolution and denial of Daniels’ petition is dispositive of Daniels’ motion for default judgment. The motion is denied.

¶5 On appeal, Daniels argues that the District Court erred in denying his petition for postconviction relief by refusing to recognize new evidence regarding the defense of justifiable use of force. The District Court determined that Daniels’ petition was time-barred. Additionally, the District Court determined that the issues Daniels alleged in his petition had previously been considered and decided by this Court in Daniels’ 2011 appeal and the denial in 2014 of his first petition. Pursuant to § 46-21-102(2), MCA, a petition is time-barred unless it alleges the existence of new evidence that would negate the criminal culpability for which the petitioner was convicted. On appeal, Daniels does not offer newly discovered evidence; rather, he offers similar evidence concerning the victim’s—Buddy’s—violent tendencies and drug use. The District Court correctly held that Daniels’ petition appears to be yet another attempt to relitigate the same issues as in his previous petitions. Even if Daniels has more evidence of Buddy’s violent character, Daniels testified “that his motivation on the night of the shooting was the confrontation he just had with his son minutes before the event.” *Daniels*, 2014 MT 92N, ¶ 5.

¶6 This Court has previously stated that Daniels was not entitled to manipulate his testimony or change it *ex post facto*. Additionally, the arguments Daniels raises in his petition could have been raised on direct appeal in 2011. As such, the same issues may not be “raised, considered, or decided” in a postconviction proceeding. Section 46-21-105(2), MCA. The District Court did not err in denying Daniels’ petition for postconviction relief.

¶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.

¶8 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ INGRID GUSTAFSON

/S/ BETH BAKER

/S/ JIM RICE