

DA 12-0135

IN THE SUPREME COURT OF THE STATE OF MONTANA

2012 MT 287N

THAYLIN SHAWN PIERCE,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Thirteenth Judicial District,
In and For the County of Yellowstone, Cause No. DV 11-1377
Honorable Gregory R. Todd, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Thaylin Shawn Pierce, self-represented; Billings, Montana

For Appellee:

Steve Bullock, Montana Attorney General; Mardell Ployhar, Assistant
Attorney General; Helena, Montana

Scott Twito, Yellowstone County Attorney; David Carter, Deputy County
Attorney; Billings, Montana

Submitted on Briefs: October 24, 2012

Decided: December 12, 2012

Filed:

Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(d), 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 Thaylin Shawn Pierce appeals an order of the Thirteenth Judicial District Court, Yellowstone County, denying his petition for postconviction relief. Pierce was charged with Driving a Motor Vehicle Under the Influence of Alcohol or Drugs (DUI). On April 1, 2010, Pierce pled no contest to the DUI charge. In his petition for postconviction relief, filed September 23, 2011, Pierce made the following two claims: (1) that he received ineffective assistance of counsel because his attorney failed to present certified copies of his Colorado and Wyoming driving records, and (2) that the prosecutor's failure to disclose material evidence that Pierce had only two prior DUI convictions in any state, rather than the thirteen DUIs listed in the presentence investigation report, violated *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963). The District Court denied the petition on January 9, 2012, on the ground that his allegations could have been raised on direct appeal and therefore were procedurally barred. *Herman v. State*, 2006 MT 7, ¶ 55, 330 Mont. 267, 127 P.3d 422 ("In postconviction proceedings, § 46-21-105(2), MCA,

precludes consideration of a claim that reasonably could have been raised on direct appeal.”).

¶3 When reviewing an order denying a petition for postconviction relief, we determine whether the District Court’s factual findings are clearly erroneous and whether its legal conclusions are correct. *Whitlow v. State*, 2008 MT 140, ¶ 9, 343 Mont. 90, 183 P.3d 861.

¶4 Pierce’s appellate brief, filed on June 14, 2012, states seven issues that differ from the two that he presented in the petition for postconviction relief. On appeal, Pierce’s claims of ineffective assistance of counsel are based on: counsel allowing the court to coerce him to surrender his Fifth and Fourteenth Amendment rights, counsel’s failure to request sufficient time for him to decide whether he was under the influence of alcohol before he made a decision about his plea, and counsel’s failure to request a competency test or hearing before Pierce signed any documents. He now claims that the State failed to disclose material evidence regarding the factual basis for the change of plea hearing and results of the court-ordered portable breath test. We generally do not review issues raised for the first time on appeal, *State v. Longfellow*, 2008 MT 343, ¶ 19, 346 Mont. 286, 194 P.3d 694, and will not review the new issues raised in Pierce’s brief.

¶5 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for noncitable memorandum opinions. Pierce failed to offer argument or authority on the issues determined by the District Court

and may not present new claims on appeal that he did not raise in his petition for postconviction relief.

¶6 Affirmed.

/S/ BETH BAKER

We concur:

/S/ JIM RICE

/S/ PATRICIA COTTER

/S/ MICHAEL E WHEAT

/S/ BRIAN MORRIS