

DA 12-0380

IN THE SUPREME COURT OF THE STATE OF MONTANA

2013 MT 37N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

RODNEY PAT DeAVILA,

Defendant and Appellant.

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APPEAL FROM: District Court of the Fourth Judicial District,  
In and For the County of Missoula, Cause No. DC-98-13177  
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Rodney Pat DeAvila, self-represented, Deer Lodge, Montana

For Appellee:

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

Fred Van Valkenburg, Missoula County Attorney, Missoula, Montana

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Submitted on Briefs: January 23, 2013  
Decided: February 12, 2013

Filed:

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Clerk

Chief Justice Mike McGrath 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 Rodney DeAvila appeals from the District Court's order denying his petition for DNA testing. We affirm.

¶3 In 1998 DeAvila picked up a 17-year old female hitchhiker, attempted to subdue her with an inhalant, struck her, sexually assaulted her and threatened to kill her if she told anyone. In March 2000, he pled guilty, admitting that "I picked up a girl & forced her to have sex with me & said I would kill her if she told." He was convicted of aggravated kidnapping, sexual intercourse without consent and intimidation and sentenced to 60 years. Following several petitions for postconviction relief, this Court upheld the denial of DeAvila's motion to withdraw his guilty plea. *State v. DeAvila*, 2012 MT 53N, 364 Mont. 551.

¶4 In May 2012, DeAvila filed a petition for DNA testing as provided in § 46-21-110, MCA. On June 6, 2012, the District Court denied the petition.

¶5 Section 46-21-110, MCA, contains the requirements that must be met to qualify for postconviction DNA testing, one of which is that identity of the perpetrator was or should have been a significant issue in the case. Section 46-21-110(5)(c), MCA; *Haffey v. State*, 2010 MT 97, ¶ 14, 356 Mont. 198, 233 P.3d 315. Identity is not an issue when the defendant admits to committing the act, as DeAvila did in this case. *Haffey*, ¶ 15. In addition, by

pleading guilty DeAvila waived all factual defenses that existed prior to the plea. *State v. Johnson*, 274 Mont. 124, 129, 907 P.2d 150, 153 (1995). The District Court properly applied the law and denied the petition.

¶6 DeAvila raises other claims about his guilty plea and about his former attorney. We decline to address issues raised for the first time on appeal, *State v. Wetzel*, 2005 MT 154, ¶ 13, 327 Mont. 413, 114 P.3d 269, and decline to address issues that were previously procedurally barred. *DeAvila*, ¶ 5.

¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our Internal Operating Rules, which provides for memorandum opinions. The issues in this case are legal and are controlled by settled Montana law, which the District Court correctly applied.

¶8 Affirmed.

/S/ Mike McGrath

We concur:

/S/ Michael E Wheat  
/S/ Laurie McKinnon  
/S/ Patricia Cotter  
/S/ Brian Morris