

DA 12-0658

IN THE SUPREME COURT OF THE STATE OF MONTANA

2013 MT 181N

ALBERT ERNEST INSUA,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DV 05-11
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Albert E. Insua, self-represented; Deer Lodge, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General; Mardell Ployhar, Assistant
Attorney General; Helena, Montana

William Fulbright, Ravalli County Attorney; Hamilton, Montana

Submitted on Briefs: June 12, 2013

Decided: July 9, 2013

Filed:

Clerk

Justice Brian Morris 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 Appellant Albert E. Insua (Insua) appeals the order of the Fourth Judicial District Court, Missoula County, that dismissed his petition for post-conviction relief. We affirm.

¶3 A jury found Insua guilty of sexual intercourse without consent and three counts of sexual assault in 2000. We affirmed Insua's conviction on appeal. *State v. Insua*, 2004 MT 14, 319 Mont. 254, 84 P.3d 11.

¶4 Insua timely filed a petition for post-conviction relief on December 20, 2004. The district court denied Insua's petition and we affirmed. *Insua v. State*, 2006 MT 288N, 335 Mont. 398, 149 P.3d 913. Insua also filed a petition for writ of habeas corpus. The district court denied Insua's petition for a writ. This Court affirmed. *Insua v. State*, 2009 MT 157N, 351 Mont. 549, 214 P.3d 788.

¶5 Insua now has filed a second petition for post-conviction relief. Insua argues in his second petition that new evidence demonstrates his innocence. The District Court denied Insua's second petition on the basis that "these matters have been brought before this Court on several occasions and remittiturs filed affirmed the Court's rulings." The District Court added that it has no further remedy for Insua. Insua appeals.

¶6 Insua argues that new evidence of the rape examination conducted on the victim

would demonstrate his innocence. He claims to have attempted multiple times during trial to acquire this information. We review a district court's denial of a petition for post-conviction relief to determine whether the court's findings of fact are clearly erroneous and whether its conclusions of law are correct. *Sanchez v. State*, 2012 MT 191, ¶ 12, 366 Mont. 132, 285 P.3d 540.

¶7 Section 46-21-105(1)(b), MCA, bars a second or subsequent petition that raises grounds for relief that reasonably could have been raised in the original petition. Insua's second petition raises no new claim that could not have been raised in his first post-conviction petition. 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. It is manifest on the face of the briefs and the record before us that the District Court correctly applied the procedural bar to Insua's claim.

¶8 Affirmed.

/S/ BRIAN MORRIS

We concur:

/S/ MIKE McGRATH
/S/ PATRICIA COTTER
/S/ BETH BAKER
/S/ JIM RICE