

SUPREME COURT OF MONTANA

State v. Grimes

2007 MT 90N (2007) · No. DA 06-0421 · Decided April 3, 2007

SUMMARY

The Montana Supreme Court affirmed the denial of Burly Grimes's motion to file an out-of-time appeal from the denial of his prior petition for postconviction relief or, alternatively, to file a second petition. The court held that the appeal was untimely and that the proposed second postconviction petition did not fall within the statutory exception for newly discovered evidence.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Karla M. Gray; Justice Brian Morris; Justice W. William Leaphart; Justice John Warner; Justice Jim Rice
JURISDICTION	Montana
DECIDED	April 3, 2007
DOCKET	DA 06-0421
DISPOSITION	affirmed
PROCEDURAL POSTURE	Grimes appealed the Fifth Judicial District Court's denial of his motion to file an out-of-time appeal from a prior postconviction-relief proceeding or, alternatively, to file a second petition for postconviction relief.
STANDARD OF REVIEW	Not expressly stated; the Court determined that the District Court did not err in denying the motion.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Burly Grimes v. State of Montana

TOPICS

- state post-conviction relief
- post-conviction relief
- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court erred in denying Grimes's motion to file an out-of-time appeal from the denial of his prior postconviction petition.
2. Whether Grimes could file a second petition for postconviction relief asserting ineffective assistance and sentencing-related claims.

HOLDINGS

1. The motion for an out-of-time appeal was properly denied because Montana law requires an appeal in a postconviction matter to be taken within 60 days of entry of the order, and Grimes sought relief more than five years after the order.
2. The District Court properly denied the request to file a second postconviction petition because the one-year filing deadline and the requirement that all grounds be raised in the original or amended petition barred the proposed claims, and Grimes did not allege the statutory exception for newly discovered evidence establishing actual innocence.

KEY QUOTATIONS

“The only exception to § 46-21-102(1), MCA, allows up to one year after discovery for a person to file a claim for postconviction relief alleging the existence of newly-discovered evidence establishing that the petitioner did not engage in the criminal conduct for which he was convicted.” (§18)

FACTUAL BACKGROUND

Grimes was convicted of robbery, aggravated kidnapping, and deliberate homicide. After the Montana Supreme Court affirmed his convictions, he filed a pro se petition for postconviction relief that the District Court dismissed as untimely and duplicative of issues raised on direct appeal. More than five years after that dismissal, Grimes sought an out-of-time appeal or permission to file a second postconviction petition, asserting ineffective assistance based on advice about the filing deadline and challenging aspects of his sentence.

PROCEDURAL HISTORY

Grimes was convicted of robbery, aggravated kidnapping, and deliberate homicide, and the Montana Supreme Court affirmed his convictions on direct appeal. His 2000 pro se petition for postconviction relief was dismissed as untimely and because the issues had already been raised on direct appeal; he did not appeal that dismissal. More than five years later, he sought permission to appeal out of time or file a second postconviction petition. The District Court denied the motion, and the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Grimes, 1999 MT 145, 295 Mont. 22, 982 P.2d 1037

OPINION

PER CURIAM.

No. DA 06-0421 IN THE SUPREME COURT OF THE STATE OF MONTANA 2007 MT 90N
STATE OF MONTANA, Plaintiff and Respondent, v. BURLY GRIMES, Defendant and Appellant.
APPEAL FROM: District Court of the Fifth Judicial District, In and For the County of Jefferson,
Cause No. 96-1541 Honorable Loren Tucker, Presiding Judge COUNSEL OF RECORD: For
Appellant: Burlly Grimes, pro se, Deer Lodge, Montana For Respondent: Hon. Mike McGrath,
Attorney General; Tammy K. Plubell, Assistant Attorney General, Helena, Montana Matthew
Johnson, Jefferson County Attorney, Boulder, Montana Submitted on Briefs: February 27, 2007
Decided: April 3, 2007 Filed: _____ Clerk Chief
Justice Gray delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(d)(v),
Montana Supreme Court 1996 Internal Operating Rules, as amended in 2003, the following
memorandum decision shall not be cited as precedent.

It shall be filed as a public document with the Clerk of the Supreme Court and its case title,
Supreme Court 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 Burlly Grimes appeals
from the order of the Fifth Judicial District Court, Jefferson County, denying his March of 2006
motion to file an out-of-time appeal or second petition for postconviction relief.

We affirm. ¶3 We restate the issue as whether the District Court erred in denying Grimes' motion.
¶4 We have determined to decide this case pursuant to Section I, Paragraph 3(d) of our 1996
Internal Operating Rules, as amended in 2003, which provides for memorandum opinions.

The issue is clearly controlled by settled Montana law. ¶5 Grimes was convicted of robbery,
aggravated kidnapping and deliberate homicide, and we affirmed his conviction on direct appeal.
See State v. Grimes, 1999 MT 145, 295 Mont. 22, 982 P.2d 1037. He filed a pro se petition for
postconviction relief in the District Court on September 25, 2000, which the court dismissed as
untimely and because Grimes had already raised the same issues on direct appeal.

He did not appeal. ¶6 Grimes now wishes to file an out-of-time appeal of his prior petition for
postconviction relief or, alternatively, a second petition for postconviction relief. He states 2 he
would like to argue that an attorney gave him bad advice, constituting ineffective assistance of
counsel, regarding the time available to file his pro se petition for postconviction relief, and that a
mandatory minimum parole eligibility date and additional restrictions were improperly imposed in
his sentence. ¶7 Section 46-21-203, MCA, provides that an appeal in a postconviction matter must
be taken within 60 days of the entry of the order.

Grimes' petition for postconviction relief was denied in November of 2000, over five years before
he filed his present request for permission to file an out-of-time appeal. It is far too late for an

appeal of that matter. ¶8 Further, with one exception, § 46-21-102(1), MCA, requires that a petition for postconviction relief must be filed within one year of the date the conviction becomes final.

Moreover, § 46-21-105(1)(a), MCA, requires that all grounds for postconviction relief must be raised in the original or amended petition. The only exception to § 46-21-102(1), MCA, allows up to one year after discovery for a person to file a claim for postconviction relief alleging the existence of newly-discovered evidence establishing that the petitioner did not engage in the criminal conduct for which he was convicted.

See § 46-21-102(2), MCA. Grimes has not alleged the existence of any such evidence. ¶9 We hold the District Court did not err in denying Grimes' motion to file an out-of- time appeal or second petition for postconviction relief. Affirmed. /S/ KARLA M. GRAY 3 We concur: /S/ BRIAN MORRIS /S/ W. WILLIAM LEAPHART /S/ JOHN WARNER /S/ JIM RICE 4