

SUPREME COURT OF MONTANA

Michael Jeffrey Anderson v. State of Montana

2012 MT 153N (Mont. 2012) · No. DA 12-0109 · Decided July 18, 2012

SUMMARY

The Montana Supreme Court affirmed the dismissal of Michael Jeffrey Anderson’s petition for post-conviction relief. The court held that the petition was untimely and that the documents initially filed failed to comply with statutory requirements for a verified petition. The opinion was issued as a noncitable memorandum opinion.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice Jim Rice; Jim Rice; James C. Nelson; Patricia Cotter; Beth Baker; Brian Morris
JURISDICTION	Montana
DECIDED	July 18, 2012
DOCKET	DA 12-0109
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the District Court's denial and dismissal of a petition for postconviction relief.
STANDARD OF REVIEW	The court reviewed the legal issues under settled Montana law and determined whether the District Court correctly interpreted and applied the statutory postconviction-filing requirements.
PRECEDENTIAL VALUE	Nonprecedential; noncitable memorandum opinion
PARTIES	Michael Jeffrey Anderson v. State of Montana

TOPICS

- state post-conviction relief
- post-conviction relief
- appellate procedure
- criminal procedure
- preservation of error

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether Anderson's postconviction petition was timely under Montana law.
2. Whether Anderson's June 14, 2011 postconviction filings complied with the statutory requirements for a verified petition.
3. Whether the District Court properly dismissed the postconviction petition.

HOLDINGS

1. The petition was untimely because Anderson's case became final on May 3, 2010, and he did not file a proper postconviction petition by the May 3, 2011 deadline.
2. The June 14 filings were procedurally defective because the petition and affidavit were photocopies, were not dated and signed before a notary, and did not provide the required original sworn verification.

KEY QUOTATIONS

“Anderson’s petition was barred as untimely and properly dismissed.” (§6)

FACTUAL BACKGROUND

Anderson's criminal case became final on May 3, 2010, giving him until May 3, 2011, to file a timely petition for postconviction relief. He claimed that a friend delivered documents to the District Court Clerk in April 2011, but the documents were returned because he had neither submitted the filing fee nor obtained a fee waiver. His June 14, 2011 filing was untimely and also lacked the required original, sworn, notarized verification; he did not file a proper petition until September 6, 2011.

PROCEDURAL HISTORY

Anderson was convicted after a jury trial of felony assault with a weapon, misdemeanor partner or family member assault, and misdemeanor assault. The Montana Supreme Court previously affirmed his conviction while remanding for removal of an alcohol condition from his sentence. Anderson filed postconviction materials in June 2011, but the District Court dismissed them as improperly verified and untimely; the court dismissed his later pleadings as well. He appealed the December 2011 dismissal, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Anderson, 2010 MT 17N, ¶ 7

OPINION

PER CURIAM.

July 18 2012 DA 12-0109 IN THE SUPREME COURT OF THE STATE OF MONTANA 2012 MT 153N MICHAEL JEFFREY ANDERSON, Petitioner and Appellant, v. STATE OF MONTANA, Respondent and Appellee. APPEAL FROM: District Court of the Eighteenth Judicial District, In and For the County of Gallatin, Cause No. DV 11-577C Honorable John C. Brown, Presiding Judge COUNSEL OF RECORD: For Appellant: Michael Jeffrey Anderson, self-represented; Sheridan, Oregon For Appellee: Steve Bullock, Montana Attorney General; Katie F. Schulz, Assistant Attorney General; Helena, Montana Marty Lambert, Gallatin County Attorney; Eric N. Kitzmiller, Deputy County Attorney; Bozeman, Montana Submitted on Briefs: June 27, 2012 Decided: July 18, 2012 Filed: _____ Clerk Justice Jim Rice 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 Michael Jeffrey Anderson appeals from the District Court's denial of his petition for postconviction relief. Anderson was convicted, after a trial by jury, of felony assault with a weapon, misdemeanor partner family member assault, and misdemeanor assault.

He appealed, and this Court remanded the matter to the District Court to strike an alcohol condition from Anderson's sentence but otherwise affirmed his conviction. State v. Anderson, 2010 MT 17N, ¶ 7. Our opinion was issued on February 2, 2010. ¶3 Anderson filed a petition for postconviction relief with supporting affidavit and memorandum and a request for waiver of the filing fee on June 14, 2011.

On June 27, the District Court entered an order of dismissal, stating: Mr. Anderson failed to file an original, sworn Affidavit supporting the Petition, and his Petition is not verified. Neither the Affidavit nor the Petition were dated and signed before a notary. Also, the Petition, Memorandum and Affidavit are photocopies instead of the original, signed document.

Therefore, Mr. Anderson's request for postconviction relief is fatally defective for failure to comply with §§ 46-21-103 and -104, MCA, requiring the filing of a verified petition. ¶4 On September 6, 2011, Anderson filed a motion for reconsideration and filed a new set of postconviction pleadings in the District Court.

After receiving the State's response, the District Court issued an order dismissing the petition on December 9, 2011. The court reasoned that, even assuming that Anderson's June 14 filing was valid, his petition was untimely. Anderson's case became final on May 3, 2010, and he had until May 3, 2011, to file a petition for 2 postconviction relief, but he failed to do so.

Anderson filed a notice of appeal to this Court on February 10, 2012. ¶5 Anderson argues that his petition was delivered to the Clerk of the District Court by a friend in April, 2011, before the filing deadline, which he believed was May 2, 2011. He asserts he did not receive due process.

However, Anderson's failure to submit a filing fee or obtain a fee waiver when originally submitting his documents to the Clerk of the District Court required that his documents be returned. The documents he then filed on June 14, 2011, were not only untimely, but also improper and subjected his petition to dismissal for failure to comply with statutory requirements.

In the end, he did not file a proper petition until September 6, 2011, long after the filing period had lapsed. ¶6 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.

The issues in this case are legal and are controlled by settled Montana law, which the District Court correctly interpreted. Anderson's petition was barred as untimely and properly dismissed. ¶7 Affirmed. /S/ JIM RICE We concur: /S/ JAMES C. NELSON /S/ PATRICIA COTTER /S/ BETH BAKER /S/ BRIAN MORRIS 3