

SUPREME COURT OF MONTANA

Michael Jeffrey Anderson v. State of Montana

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

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