

SUPREME COURT OF MONTANA

Larson v. State

2017 MT 271N (Mont. 2017) · No. DA 17-0010 · Decided November 7, 2017

SUMMARY

The Montana Supreme Court affirmed the dismissal of Walter M. Larson Jr.’s second petition for post-conviction relief. The court held that the petition was virtually identical to the first, raised allegations that could have been presented earlier, and offered no new substantial evidence as required for a successive petition. The court also upheld the decision not to require renewed affidavits or hold an evidentiary hearing.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Justice James Jeremiah Shea; Chief Justice Mike McGrath; Justice Beth Baker; Justice Dirk M. Sandefur; Justice Jim Rice
JURISDICTION	Montana
DECIDED	November 7, 2017
DOCKET	DA 17-0010
DISPOSITION	affirmed
PROCEDURAL POSTURE	Larson appealed the Seventh Judicial District Court's dismissal with prejudice of his second petition for postconviction relief alleging ineffective assistance of trial counsel.
STANDARD OF REVIEW	The court reviews denial of a postconviction-relief petition for clearly erroneous factual findings and correct legal conclusions. Discretionary rulings, including whether to hold an evidentiary hearing, are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Walter M. Larson, Jr. v. State of Montana

TOPICS

- state post-conviction relief
- successive petitions
- ineffective assistance
- right to counsel
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court properly dismissed Larson's second postconviction-relief petition under Montana Code section 46-21-105(1)(b) because it repeated claims that were or could have been raised in the original petition.
2. Whether the District Court abused its discretion by declining to require former defense counsel to submit new response affidavits or by declining to hold an evidentiary hearing.
3. Whether Larson was entitled to appointment of counsel in the postconviction proceeding.

HOLDINGS

1. A district court must dismiss a second or subsequent postconviction-relief petition unless it raises grounds for relief that could not reasonably have been raised in the original or amended original petition. Larson's second petition was properly dismissed because it repeated virtually identical conclusory ineffective-assistance allegations and presented no new substantial evidence.
2. The District Court did not abuse its discretion by declining to hold another evidentiary hearing or require Larson's former attorneys to submit response affidavits a second time.
3. Larson had no constitutional entitlement to appointed counsel in his postconviction proceeding, and appointment after direct appeal is within the district court's discretion.

KEY QUOTATIONS

“this case is decided by memorandum opinion and shall not be cited and does not serve as precedent.” (§ 1)

“A district court “shall dismiss a second or subsequent petition [for PCR] by a person who has filed an original petition unless the second or subsequent petition raises grounds for relief that could not reasonably have been raised in the original or amended original petition,”” (§ 7)

FACTUAL BACKGROUND

Larson was convicted of deliberate homicide and tampering with physical evidence. His first postconviction petition alleged ineffective assistance of trial counsel and was dismissed because it failed to state a legally sufficient claim and lacked supporting facts or evidence. His second petition repeated virtually identical allegations and offered no new substantial evidence or grounds that could not reasonably have been raised in the first petition.

PROCEDURAL HISTORY

Larson was convicted of deliberate homicide and tampering with physical evidence, and the Montana Supreme Court affirmed his convictions. He filed a first petition for postconviction relief, which the District Court dismissed for failure to state a claim; the Supreme Court affirmed that dismissal. Larson then filed a second petition raising substantially identical ineffective-assistance allegations, which the District Court dismissed under Montana's successive-petition statute. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Larson, 2015 MT 271, 381 Mont. 94, 356 P.3d 488
- Larson v. State, 2016 MT 259N, 36 Mont. 393, 384 P.3d 46
- Beach v. State, 2009 MT 398, 353 Mont. 411, 220 P.3d 667
- Whitlow v. State, 2008 MT 140, 343 Mont. 90, 183 P.3d 861
- Heath v. State, 2009 MT 7, 348 Mont. 361, 202 P.3d 118
- State v. Bromgard, 285 Mont. 170, 948 P.2d 182 (1997)
- Ellenburg v. Chase, 2004 MT 66, 320 Mont. 315, 87 P.3d 473
- Kelly v. State, 2013 MT 21, 368 Mont. 309, 300 P.3d 120
- Marble v. State, 2015 MT 242, 380 Mont. 366, 355 P.3d 742
- First Bank (N.A.)-Billings v. Heidema, 219 Mont. 373, 711 P.2d 1384 (1986)