

SUPREME COURT OF MONTANA

Sanchez v. State

86 P.3d 1 (2004) · No. No. 03-326 · Decided January 27, 2004

SUMMARY

The Supreme Court of Montana affirmed the denial of Gregory Sanchez's petition for postconviction relief. The court held that the petition was untimely under Montana's one-year statutory limitation period and that no exception for newly discovered evidence or miscarriage of justice applied.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	W. William Leaphart; James C. Nelson; Jim Regnier; John Warner; Jim Rice
JURISDICTION	Montana
DECIDED	January 27, 2004
DOCKET	No. 03-326
DISPOSITION	affirmed
PROCEDURAL POSTURE	Sanchez appealed the Montana District Court's denial of his petition for postconviction relief on the ground that the petition was untimely.
STANDARD OF REVIEW	The court reviews the denial of postconviction relief to determine whether the district court's findings are clearly erroneous and whether the district court correctly interpreted the law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Gregory Sanchez v. State of Montana

TOPICS

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

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court correctly denied Sanchez's petition for postconviction relief as untimely under section 46-21-102(1), MCA.
2. Whether any statutory or miscarriage-of-justice exception to the postconviction-relief time bar applied.
3. Whether Sanchez established grounds warranting postconviction relief based on ineffective assistance of counsel, denial of access to the courts, denial of due process, or an involuntary or unknowing guilty plea.

HOLDINGS

1. The timeliness of a petition for postconviction relief is governed by the statute of limitations in effect when the petition is filed, rather than the statute in effect when the offense was charged or the conviction occurred.
2. A conviction becomes final when the time for appealing to the Montana Supreme Court expires.
3. Sanchez's postconviction-relief petition was untimely because it was filed more than one year after his conviction became final.
4. No exception to the statutory time bar applied because Sanchez did not allege newly discovered evidence establishing actual innocence or demonstrate a clear miscarriage of justice.

KEY QUOTATIONS

“This time limitation is a jurisdictional limit on litigation.” (¶ 9)

“The issue that is dispositive of this case is whether his petition for postconviction relief was timely filed. It was not.” (¶ 14)

FACTUAL BACKGROUND

Sanchez pleaded guilty to deliberate homicide after signing an acknowledgment and waiver of rights and being advised of the consequences of the plea. The District Court sentenced him to life imprisonment plus a consecutive ten-year weapon-enhancement sentence, and he did not file a direct appeal. More than two years after the conviction became final, Sanchez filed a petition for postconviction relief alleging ineffective assistance, denial of access to the courts, denial of due process, and that his guilty plea was not entered freely and knowingly.

PROCEDURAL HISTORY

Sanchez pleaded guilty to deliberate homicide in 1997 and received a life sentence plus a consecutive ten-year weapon-enhancement sentence. He did not file a direct appeal. He filed an initial petition for postconviction relief on August 31, 2000, and an amended petition on December 5, 2002. The District Court denied both petitions as time-barred under section 46-21-102(1), MCA, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Maier v. State, 2003 MT 144, ¶ 8, 316 Mont. 181, 69 P.3d 1194
- State v. Carson, 2002 MT 234, ¶¶ 13-14, 311 Mont. 485, 56 P.3d 844
- State v. Abe, 2001 MT 260, ¶ 15, 307 Mont. 233, 37 P.3d 77
- State v. Rosales, 2000 MT 89, ¶ 7, 299 Mont. 226, 999 P.2d 313

OPINION

LEAPHART, J.

86 P.3d 1 (2004) 2004 MT 9 Gregory SANCHEZ, Petitioner and Appellant, v. STATE of Montana, Respondent and Respondent. No. 03-326. Supreme Court of Montana. Submitted on Briefs December 19, 2003. Decided January 27, 2004. Rehearing Denied March 24, 2004.

For Appellant: Gregory J. Sanchez, Pro Se, Shelby, Montana. For Respondent: Mike McGrath, Attorney General; Micheal S. Wellenstein, Assistant Attorney General, Helena, Montana, Dennis Paxinos, County Attorney, Billings, Montana. Justice W. WILLIAM LEAPHART delivered the Opinion of the Court. ¶ 1 Gregory Sanchez (Sanchez) appeals the District Court's denial of postconviction relief.

We affirm. ¶ 2 The lone issue on appeal is whether the District Court correctly denied Sanchez's petition for postconviction relief. Factual and Procedural Background ¶ 3 On August 21, 1997, Sanchez pled guilty to the charge of deliberate homicide. He had signed an acknowledgment and waiver of rights on August 20, 1997. Sanchez was not suffering from any mental defect.

He was fully advised of his rights and stated that he understood he waived some rights by pleading guilty. He was represented by the Yellowstone County Public Defender Office. ¶ 4 On November 14, 1997, the court sentenced Sanchez to life in prison for the offense of deliberate homicide.

The court also ordered a consecutive ten-year sentence pursuant to Montana's weapon enhancement statute. The court issued its written judgment on November 28, 1997. The judgment was filed on December 3, 1997. No direct appeal of this judgment was filed.

On this *2 same date, Sanchez was served with the notice of his right to apply for sentence review within sixty days from the date the judgment was filed. ¶ 5 On December 26, 1997, Sanchez filed for sentence review.

On February 19, 1998, Sanchez's application for sentence review was heard before the Sentence Review Division of this Court. Sanchez was present and proceeded pro se. At the hearing, Sanchez stated he did not wish to proceed.

The Review Division unanimously decided that his application for sentence review should "be held in abeyance until the time" Sanchez finishes the appeal process. He would then have sixty

days to refile for sentence review. Sanchez did not file an appeal. ¶ 6 On January 27, 1999, Sanchez again applied for sentence review.

Although the Review Board noted his application for review was late, it nonetheless granted his request for sentence review. When Sanchez appeared before the Review Board on this occasion, he was represented by counsel. At the review, Sanchez again stated he did not wish to proceed.

The Review Board continued the application for review until August of 1999 so that Sanchez could appeal his sentence if he desired. The Review Board did not explain why it allotted Sanchez additional time to appeal his sentence at this late stage in the proceedings. Nonetheless, Sanchez did not file an appeal. ¶ 7 On August 31, 2000, Sanchez filed a petition for postconviction relief.

He alleged ineffective assistance of counsel as well as numerous other claims concerning his sentence. On December 5, 2002, he filed an amended petition for postconviction relief alleging ineffective assistance of counsel, denial of access to the courts, denial of due process, and that he did not enter his guilty plea freely and knowingly.

On March 6, 2003, the District Court denied Sanchez postconviction relief because his petitions were both time-barred by § 46-21-102(1), MCA. Sanchez appeals. Discussion ¶ 8 We review a denial of a petition for postconviction relief to determine whether a district court's findings are clearly erroneous and whether it correctly interpreted the law. *Maier v. State*, 2003 MT 144, ¶ 8, 316 Mont.

181, ¶ 8, 69 P.3d 1194, ¶ 8. ¶ 9 "To determine whether a petition for postconviction relief is timely, we look to the statute of limitations in effect at the time the petition is filed, not to the statute in effect at the time of charge or conviction." *State v. Carson*, 2002 MT 234, ¶ 13, 311 Mont. 485, ¶ 13, 56 P.3d 844, ¶ 13. A petition is required to be filed "at any time within 1 year of the date that the conviction becomes final."

Section 46-21-102(1), MCA. The previous time limit of five years was amended to the current one-year limit on April 24, 1997. A conviction is final when the time to appeal to this Court expires. Section 46-21-102(1)(a), MCA. This time limitation is a jurisdictional limit on litigation. *Maier*, ¶ 20. A failure to file within the allotted time defeats a court's jurisdiction to hear a postconviction claim.

Carson, ¶ 14. ¶ 10 The jurisdictional time limit is not absolute. A statutory exception to the mandatory time limit exists if a claim "alleges the existence of newly discovered evidence that, if proved and viewed in light of the evidence as a whole would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted[.]" Section 46-21-102(2), MCA.

This information "may be raised in a petition filed within 1 year of the date on which the conviction becomes final or the date on which the petitioner discovers, or reasonably should have discovered, the existence of the evidence, whichever is later." Section 46-21-102(2), MCA.

We have also stated that the jurisdictional time limit may be waived in order to prevent a clear miscarriage of justice. *State v. Abe*, 2001 MT 260, ¶ 15, 307 Mont. 233, ¶ 15, 37 P.3d 77, ¶ 15. A miscarriage of justice exists if a defendant provides the court with newly-discovered evidence that proves the defendant is actually innocent. *State v. Rosales*, 2000 MT 89, ¶ 7, 299 Mont.

226, ¶ 7, 999 P.2d 313, ¶ 7. ¶ 11 Rule 5(b), M.R.App.P., states that an appeal from a judgment in criminal cases must be taken within sixty days. Sanchez's sentence was imposed on November 14, 1997. *3 Sanchez had sixty days from this date to file an appeal to this Court. He did not appeal. His time for appeal expired on January 13, 1998, and his conviction was then final for purposes of the postconviction hearing statute.

On August 31, 2000, Sanchez first filed a petition for postconviction relief. On this date, § 46-21-102(1), MCA, provided that a petition for postconviction relief must be taken within one year from the date the conviction becomes final.

Although there was a five-year time period allowed for filing petitions for postconviction relief when Sanchez committed the deliberate homicide offense, the statute in effect at the time he filed his petition, as well as when his conviction became final, only allowed for one year to file such a petition.

The one-year time period applies to Sanchez's petition. *Carson*, ¶ 13. Thus, Sanchez's initial filing for postconviction relief was over one and one-half years late. His amended petition for postconviction relief was filed on December 5, 2002, nearly four years past the deadline. ¶ 12 No exceptions to the statutory time bar apply in this case. Sanchez has not pointed to any newly-discovered evidence that proves he is innocent.

Rosales, ¶ 7; § 46-21-102(2), MCA. Similarly, he makes no claims that he is actually innocent of the homicide. *Rosales*, ¶ 7. No miscarriage of justice has occurred. *Abe*, ¶ 15. ¶ 13 Sanchez makes numerous allegations in his appeal. These include that his counsel was ineffective, he was denied access to the courts, he was denied due process of law, and he did not enter a plea of guilty freely and knowingly.

However, Sanchez does not provide sufficient factual basis to establish any of these claims. ¶ 14 The issue that is dispositive of this case is whether his petition for postconviction relief was timely filed. It was not. Sanchez has failed to establish that any of the exceptions to the jurisdictional time bar apply. Sanchez has not established that the District Court's findings are clearly erroneous or that the court's interpretations of law are incorrect.

Maier, ¶ 8. We affirm. JAMES C. NELSON, JIM REGNIER, JOHN WARNER and JIM RICE, JJ., concur.

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