

SUPREME COURT OF MONTANA

Howell v. State

2004 MT 380N (Mont. 2004) · No. No. 04-414 · Decided December 28, 2004

SUMMARY

The Montana Supreme Court affirmed the dismissal of Joseph A. Howell’s petition for postconviction relief as untimely. The court held that the petition, filed nearly thirteen years after judgment and sentence, was barred by the five-year limitation period in effect at the time of his conviction, and rejected Howell’s related arguments concerning waiver and his Eighth Amendment claim.

CASE DETAILS

|                       |                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Montana                                                                                                                                                               |
| WRITING FOR THE COURT | Patricia O. Cotter; Karla M. Gray; John Warner; W. William Leaphart; Jim Rice                                                                                                          |
| JURISDICTION          | Montana                                                                                                                                                                                |
| DECIDED               | December 28, 2004                                                                                                                                                                      |
| DOCKET                | No. 04-414                                                                                                                                                                             |
| DISPOSITION           | affirmed                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Howell appealed the Ravalli County District Court's dismissal of his petition for postconviction relief as untimely.                                                                   |
| STANDARD OF REVIEW    | The court reviews the denial of postconviction relief to determine whether the district court's factual findings are clearly erroneous and whether its conclusions of law are correct. |
| PRECEDENTIAL VALUE    | nonprecedential                                                                                                                                                                        |
| PARTIES               | Joseph A. Howell v. State of Montana                                                                                                                                                   |

TOPICS

- state post-conviction relief
- post-conviction relief
- sentencing
- cruel and unusual punishment
- appellate procedure

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- appellate procedure

## QUESTIONS PRESENTED

1. Whether the District Court could dismiss Howell's postconviction-relief petition as untimely without ordering the State to file a responsive pleading.
2. Whether Howell's Eighth Amendment challenge to his 60-year sentence without parole could be raised at any time and therefore was not subject to the applicable five-year postconviction statute of limitations.

## HOLDINGS

1. The District Court properly dismissed the petition as untimely without first ordering a responsive pleading because the petition was plainly filed outside the applicable five-year limitations period.
2. The court rejected Howell's attempt to avoid the limitations bar by characterizing his sentence as an ongoing Eighth Amendment violation and affirmed dismissal of the petition as untimely.

## KEY QUOTATIONS

*“Howell did not file such a petition until May 2004, well outside the statutory time period. It is clearly untimely and thus barred.”* (¶ 9)

## FACTUAL BACKGROUND

A Ravalli County jury convicted Howell in May 1991 of sexual assault, sexual intercourse without consent, and indecent exposure. He was sentenced to a total of 60 years' incarceration without the possibility of parole. Although his convictions were affirmed on direct appeal, he did not file a postconviction petition until May 2004, more than five years after his judgment and sentence were filed.

## PROCEDURAL HISTORY

A jury convicted Howell in 1991 of sexual assault, sexual intercourse without consent, and indecent exposure, and he received a total sentence of 60 years without parole. The Montana Supreme Court affirmed his convictions in 1992. Howell filed a petition for postconviction relief in May 2004, which the District Court dismissed as untimely without ordering a responsive pleading. The Montana Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- State v. Howell (1992), 254 Mont. 438, 839 P.2d 87
- State v. Root, 2003 MT 28, 314 Mont. 186, 64 P.3d 1035

## OPINION

PER CURIAM.

No. 04-414 IN THE SUPREME COURT OF THE STATE OF MONTANA 2004 MT 380N  
JOSEPH A. HOWELL, Petitioner and Appellant, v. STATE OF MONTANA, Respondent and  
Respondent. APPEAL FROM: District Court of the Twenty-First Judicial District, In and for the  
County of Ravalli, Cause No. CR 91-18-81 The Honorable Jeffrey H. Langton, Judge presiding.  
COUNSEL OF RECORD: For Appellant: Joseph A. Howell, pro se, Deer Lodge, Montana For  
Respondent: Honorable Mike McGrath, Montana Attorney General, Jennifer Anders, Assistant  
Attorney General, Helena, Montana; George Corn, Ravalli County Attorney, Hamilton, Montana  
Submitted on Briefs: November 9, 2004 Decided: December 28, 2004 Filed:  
\_\_\_\_\_ Clerk Justice Patricia O. Cotter delivered the  
Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996  
Internal Operating Rules, the following decision shall not be cited as precedent.

It shall be filed as a public document with the Clerk of the Supreme Court and shall be reported by  
case title, Supreme Court cause number and result to the State Reporter Publishing Company and  
to West Group in the quarterly table of noncitable cases issued by this Court. ¶2 Joseph A. Howell,  
appearing pro se, appeals the District Court's denial of his Petition for Postconviction Relief.

We affirm. ¶3 In May 1991, a Ravalli County jury convicted Howell of sexual assault, sexual  
intercourse without consent, and indecent exposure. Howell was sentenced to a total of 60 years'  
incarceration, without the possibility of parole. ¶4 Howell chose not to apply for sentence review,  
but instead appealed his conviction, which this Court affirmed in *State v. Howell* (1992), 254  
Mont.

438, 839 P.2d 87. On May 24, 2004, Howell filed a Petition for Postconviction Relief in the  
Twenty-First Judicial District Court, Ravalli County. The District Court did not order a responsive  
pleading from the State, but rather entered a handwritten notation on the pleading, stating that it  
was dismissed as untimely under the five-year statute of limitations for postconviction relief which  
was in effect at the time of Howell's conviction.

From this denial, Howell appeals. ¶5 Howell argues that it was error for the District Court to  
dismiss his Petition for Postconviction Relief without ordering a responsive pleading, because the  
State could have chosen to waive the time bar, and it was denied the opportunity to do so. He  
further claims 2 that the issue which he raises--that his sentence violates the Eighth Amendment to  
the United States Constitution as cruel and unusual punishment--is an issue which might arise at  
any time during a prisoner's sentence and thus cannot be time-barred.

Howell asserts that his sentence of 60 years without the possibility of parole is essentially a life  
sentence and that, because he will likely die in prison, we deem his sentence to be tantamount to  
the death penalty and apply such case law here. ¶6 The State responds that the District Court did  
not err when it dismissed Howell's Petition for Postconviction Relief as untimely.

It claims that a district court has the statutory authority to do so pursuant to § 46-21-201(1), MCA, which under both the current and 1989 versions of the statute provides that a district court has the authority to dismiss a petition for postconviction relief for failing to conclusively show that the petitioner is entitled to relief. ¶7 We review a district court's denial of a petition for postconviction relief to determine whether the court's findings of fact are clearly erroneous, and whether its conclusions of law are correct.

State v. Root, 2003 MT 28, ¶ 7, 314 Mont. 186, ¶ 7, 64 P.3d 1035, ¶ 7 (citation omitted). ¶8 We have determined to decide this case pursuant to our Order dated February 11, 2003, amending Section 1.3 of our 1996 Internal Operating Rules and providing for memorandum opinions. 3 ¶9 Howell's judgment and sentence were filed on September 9, 1991.

Under the postconviction relief statutes in effect at that time, he had five years to file a petition for postconviction relief. See § 46-21-102, MCA (1989). Howell did not file such a petition until May 2004, well outside the statutory time period. It is clearly untimely and thus barred. ¶10 On the face of the briefs and the record on appeal, it is manifest that the appeal is without merit as the issues are clearly controlled by settled Montana law.

Therefore, we affirm the judgment of the District Court. /S/ PATRICIA O. COTTER We Concur:  
/S/ KARLA M. GRAY /S/ JOHN WARNER /S/ W. WILLIAM LEAPHART /S/ JIM RICE 4