

SUPREME COURT OF THE STATE OF MONTANA

Devlin v. State

2015 MT 295N (2015) · No. DA 15-0159 · Decided October 13, 2015

SUMMARY

The Montana Supreme Court affirmed the denial of Charles Devlin’s second petition for post-conviction relief. The court held that his actual-innocence claim was untimely under Montana law and that the petition failed to satisfy procedural requirements concerning identification and support of factual allegations. The case was decided by noncitable memorandum opinion.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Justice Patricia Cotter; Patricia Cotter; Mike McGrath; Laurie McKinnon; James Jeremiah Shea; Jim Rice
JURISDICTION	Montana
DECIDED	October 13, 2015
DOCKET	DA 15-0159
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a second petition for post-conviction relief.
STANDARD OF REVIEW	De novo review applies to an actual-innocence claim brought in a post-conviction proceeding because the claim presents a mixed question of law and fact.
PRECEDENTIAL VALUE	Nonprecedential; noncitable memorandum opinion
PARTIES	Chuck Devlin v. State of Montana

TOPICS

- state post-conviction relief
- actual innocence
- successive petitions
- appellate procedure
- criminal procedure

PRACTICE AREAS

- Post-conviction relief
- Criminal procedure
- Appellate procedure

QUESTIONS PRESENTED

1. Whether Devlin's second post-conviction petition alleging actual innocence was timely under Mont. Code Ann. § 46-21-102(2).
2. Whether Devlin's petition complied with the requirement in Mont. Code Ann. § 46-21-104(1)(c) to identify supporting facts and attach evidence establishing those facts.
3. Whether the District Court erred in denying the petition as procedurally barred and deficient.

HOLDINGS

1. A claim of actual innocence based on newly discovered evidence must be filed within one year of the date the conviction becomes final or the date the petitioner discovers, or reasonably should have discovered, the evidence, whichever is later. Devlin's petition, filed on September 29, 2014, was untimely because the asserted evidence had been available since 2010 and the cited Beach decision was issued in 2013.
2. A post-conviction petition must identify all facts supporting the grounds for relief and attach affidavits, records, or other evidence establishing those facts. Devlin's petition failed to satisfy this requirement.

KEY QUOTATIONS

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

“A claim that 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, 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.” (¶ 7)

“identify all facts supporting the grounds for relief set forth in the petition and have attached affidavits, records, or other evidence establishing the existence of those facts.” (¶ 9)

FACTUAL BACKGROUND

Devlin was convicted of kidnapping an intoxicated eighteen-year-old woman and obstructing a peace officer and was designated a persistent felony offender serving a fifty-year sentence with no time suspended. In his second post-conviction petition, he relied on an anonymous 2010 letter accusing his arresting officer of being a habitual liar, a December 2010 newspaper article about another defendant who abandoned an intoxicated minor, and his discovery of statutory provisions discussed in *State v. Beach*. He filed the petition on September 29, 2014, more than one year after receiving or discovering each asserted item of evidence.

PROCEDURAL HISTORY

Devlin was convicted in 2007 and was serving a fifty-year sentence as a persistent felony offender. He filed a second petition for post-conviction relief in the Twentieth Judicial District Court, alleging actual innocence based on an anonymous letter, a newspaper article, and his interpretation of mens rea statutes. The District Court denied the petition as procedurally barred and deficient; the Montana Supreme Court affirmed in a noncitable memorandum opinion.

DISPOSITION

affirmed

CASES CITED

- State v. Devlin, 2009 MT 18, 349 Mont. 67, 201 P.3d 791
- State v. Devlin, 2009 MT 55N
- Devlin v. State, 2011 MT 120N
- State of Montana v. Barry Allan Beach, State v. Beach, 2013 MT 130, ¶ 8, 370 Mont. 163, 302 P.3d 47
- Marble v. State, 2015 MT 242, ¶ 32, 380 Mont. 366, 355 P.3d 742
- Neil Consultants, Inc. v. Lindeman, 2006 MT 80, ¶ 8, 331 Mont. 514, 134 P.3d 43

OPINION

PER CURIAM.

October 13 2015 DA 15-0159 Case Number: DA 15-0159 IN THE SUPREME COURT OF THE STATE OF MONTANA 2015 MT 295N CHUCK DEVLIN, Petitioner and Appellant, v. STATE OF MONTANA, Respondent and Appellee. APPEAL FROM: District Court of the Twentieth Judicial District, In and For the County of Lake, Cause No. DC-06-92 Honorable Deborah Kim Christopher, Presiding Judge COUNSEL OF RECORD: For Appellant: Charles Devlin, Self-Represented, Deer Lodge, Montana For Appellee: Timothy C. Fox, Montana Attorney General, Tammy K Plubell, Assistant Attorney General, Helena, Montana Bob Long, Lake County Attorney, Polson, Montana Submitted on Briefs: September 16, 2015 Decided: October 13, 2015 Filed: _____ Clerk Justice Patricia Cotter delivered the Opinion of the Court. ¶1 Pursuant to Section I, Paragraph 3(c), 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 Charles Devlin appeals from the Twentieth Judicial District Court's denial of his second petition for post-conviction relief.

We affirm. ¶3 Devlin has been before this Court multiple times since his April 2007 conviction of kidnapping an intoxicated 18-year-old female and obstructing a peace officer. Devlin claimed he was a "good Samaritan" attempting to assist this young woman by reuniting her with her friends who had abandoned her, nearly naked, in Devlin's truck. State v. Devlin, 2009 MT 18, 349 Mont.

67, 201 P.3d 791; State v. Devlin, 2009 MT 55N; Devlin v. State, 2011 MT 120N. These previous cases provide factual details and procedural background that will not be repeated here. Devlin is a

designated persistent felony offender and is serving a 50-year sentence with no time suspended. ¶4 Devlin’s petition claimed the he had new evidence of his legal innocence in the form of a newspaper article, an anonymous letter concerning a law enforcement officer, and his discovery of the “control (mens rea) statutes” we addressed in *State v. Beach*, 2013 MT 130, ¶ 8, 370 Mont.

163, 302 P.3d 47, overruled in part by *Marble v. State*, 2015 MT 242, ¶ 32, 380 Mont. 366, 355 P.3d 742. We review de novo an actual 2 innocence claim brought in a post-conviction proceeding. Such a claim is a mixed question of law and fact. *Beach*, ¶ 8. ¶5 The District Court denied Devlin’s petition on the ground that it was procedurally barred under multiple criminal procedure statutes applicable to post-conviction proceedings, including §§ 46-21-102, -104, and -105, MCA.

While noting that Devlin’s petition and accompanying material “was unclear, repetitive, and did not provide the [c]ourt with adequate support,” the District Court nonetheless carefully read and reviewed the petition and addressed the issues raised. ¶6 Devlin’s “evidence of actual innocence” consisted of an August 14, 2010 letter penned by an anonymous “concerned Lake County citizen” and sent to Devlin in prison.

The letter claimed that Devlin’s 2006 arresting officer is a habitual liar and that the staff of the Lake County Sheriff’s Office and the judge presiding over Devlin’s proceedings knew this. Devlin contends that he deserves a new trial based upon this letter. Devlin also presented a news article published in a Missoula, Montana newspaper dated December 11, 2010, addressing a young Missoula man who pled guilty to felony criminal endangerment after abandoning an intoxicated minor to whom he had provided alcohol.

Lastly, Devlin claims that his “new evidence” of actual innocence is his discovery of “control state statutes” this Court discussed in *Beach*. ¶7 Section 46-21-102(2), MCA, states: A claim that 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, 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 3 petitioner discovers, or reasonably should have discovered, the existence of the evidence, whichever is later. ¶8 Without addressing whether the evidence presented by Devlin could satisfy the “actual innocence” standard, it clearly does not meet the timeliness standard.

Devlin received the anonymously-written letter around August 14, 2010, and the news article was published in December 2010. Additionally, our case in *Beach* was published on May 14, 2013. Devlin did not file his petition until September 29, 2014, well past the one-year deadline set forth in the statute.

The District Court did not err in concluding that his petition was untimely. ¶9 Moreover, as noted by the District Court, his petition did not meet the requisites of § 46-21-104(1)(c), MCA, which

provides that a petition for post-conviction relief must “identify all facts supporting the grounds for relief set forth in the petition and have attached affidavits, records, or other evidence establishing the existence of those facts.” ¶10 The purpose of our rules of criminal procedure is “to provide for the just determination of every criminal proceeding... [and] to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.” Section 46-1-103, MCA.

While our courts will grant pro se litigants a certain amount of latitude, it is reasonable to expect pro se litigants to adhere to applicable procedural rules. *Neil Consultants, Inc. v. Lindeman*, 2006 MT 80, ¶ 8, 331 Mont. 514, 134 P.3d 43.

The District Court correctly concluded that Devlin’s petition fails to comply with multiple procedural rules. 4 ¶11 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for noncitable memorandum opinions.

In the opinion of the Court, this case presents a question clearly controlled by settled law. ¶12 Affirmed. /S/ PATRICIA COTTER We concur: /S/ MIKE McGRATH /S/ LAURIE McKINNON /S/ JAMES JEREMIAH SHEA /S/ JIM RICE 5