

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PRECEDENTIAL VALUE	Nonprecedential; noncitable memorandum opinion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