

SUPREME COURT OF THE STATE OF MONTANA

Lopez v. State

2007 MT 193N (Supreme Court of the State of Montana 2007) · No. DA 06-0618 · Decided August 14, 2007

SUMMARY

The Montana Supreme Court affirmed the Seventh Judicial District Court’s denial of Brian Lopez’s motion for appointment of counsel to pursue post-conviction relief. The Court held that appointment of counsel under § 46-8-104, MCA, is discretionary and that Lopez failed to show an abuse of discretion.

CASE DETAILS

COURT	Supreme Court of the State of Montana
WRITING FOR THE COURT	Karla M. Gray; W. William Leaphart; Patricia Cotter; John Warner; Jim Rice
JURISDICTION	Montana
DECIDED	August 14, 2007
DOCKET	DA 06-0618
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lopez appealed the Seventh Judicial District Court's denial of his motion for appointment of counsel to assist him in pursuing postconviction relief.
STANDARD OF REVIEW	Abuse of discretion
PRECEDENTIAL VALUE	Nonprecedential memorandum decision; the opinion expressly states that it shall not be cited as precedent.
PARTIES	Brian Lopez v. State of Montana

TOPICS

- post-conviction relief
- right to counsel
- appellate procedure
- standard of review
- criminal procedure

PRACTICE AREAS

- criminal postconviction relief
- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by denying Lopez's motion for appointment of counsel to pursue postconviction relief.

HOLDINGS

1. The District Court did not abuse its discretion in denying Lopez's motion for appointment of counsel because appointment under section 46-8-104, MCA, is discretionary and Lopez failed to establish that the denial was an abuse of discretion.

KEY QUOTATIONS

“As Lopez properly recognizes, a court’s determination to appoint or not appoint counsel pursuant to this statute is completely discretionary.” (¶ 4)

“It is manifest on the face of the briefs and the record that the appeal is without merit because the issue raised is one of judicial discretion and Lopez has failed to establish that the District Court abused its discretion in denying his motion for appointment of counsel.” (¶ 5)

FACTUAL BACKGROUND

In 1999, Lopez received prison sentences with suspended portions for two felony sexual-intercourse-without-consent convictions. After his release from prison, the District Court revoked the suspended sentences because he violated probation conditions and ordered him to serve the previously suspended terms. Lopez then sought appointed counsel to help prepare a postconviction-relief petition, but the District Court denied the request.

PROCEDURAL HISTORY

Lopez was convicted and sentenced in 1999, later discharged from prison, and began serving suspended portions of his sentences. After his suspended sentences were revoked for probation violations, he moved for appointment of counsel to research and prepare a postconviction-relief petition. The District Court denied the motion, concluding that Lopez had identified no basis for postconviction relief and that claims relating to his underlying convictions would be untimely. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Dillard v. State, 2006 MT 328, ¶ 12, 335 Mont. 87, 153 P.3d 575