

UNPUBLISHED

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 19-0356

FILED

KEITH E. DOYLE,

JUL 02 2019
Bowen Greenwood
Clerk of Supreme Court
State of Montana

Petitioner,

v.

ORDER

PAT McTIGHE, WARDEN,
CROSSROADS CORRECTIONAL CENTER,

Respondent.

Keith E. Doyle petitions this Court for habeas corpus relief, challenging his felony conviction from the Second Judicial District Court, Butte-Silver Bow County. Doyle attaches several documents to his petition, including a copy of his recently denied petition for a writ of habeas corpus, filed in the United States Supreme Court. *In re Doyle*, ___ U.S. ___, 139 S. Ct. 1235 (Feb. 19, 2019).

In January 2005, a jury found Doyle guilty of deliberate homicide by accountability. The District Court sentenced him to sixty-five years in Montana State Prison. Doyle appealed. *State v. Doyle*, 2007 MT 125, 337 Mont. 308, 160 P.3d 316 (*Doyle I*). One of the issues raised on appeal was whether “sufficient evidence exist[ed] to support Doyle’s conviction of deliberate homicide by accountability.” *Doyle I*, ¶¶ 5, 52-69. This Court affirmed the District Court.

Doyle sought postconviction relief in the District Court in October 2007. The District Court dismissed the petition as procedurally barred. Doyle appealed.¹ *Doyle v. State*, No. DA 08-0218, 2009 MT 105N, 2009 Mont. LEXIS 114 (*Doyle III*). We noted

¹ While Doyle’s postconviction appeal was pending, he also filed a petition for a writ of habeas corpus, maintaining various claims concerning his attorneys’ failures before and during his trial. We denied it, citing his pending appeal. *Doyle v. O’Fallon*, No. OP 08-0628, Order (Mont. Mar. 11, 2009) (*Doyle II*).

that Doyle “raised numerous claims of ineffective assistance of counsel (IAC), each based on evidentiary issues that were raised in his appeal.” *Doyle III*, ¶ 4. We affirmed the District Court’s decision, denying Doyle’s petition for postconviction relief, because “Doyle’s IAC claims are comprised entirely of conclusory allegations that do not constitute evidence establishing the existence of facts that support grounds for relief. *See* § 46-21-104(1)(c), MCA[.]” *Doyle III*, ¶ 9 (other citations omitted). We concluded that “[t]he IAC claims as pled, do not comply with the procedural prerequisites required by § 46-21-104(1)(c), MCA. It is manifest on the face of the briefs and the record that the remaining claims are procedurally barred.” *Doyle III*, ¶ 12.

In 2013, Doyle filed two petitions for a writ of habeas corpus with this Court. Doyle argued that he was deprived of a fair trial before an impartial tribunal; that the presiding Judge should have recused himself after granting leave to file the information, and that his conviction and sentence are “void.” *Doyle v. Frink*, No. OP 13-0290, Order (Mont. Jun. 5, 2013) (*Doyle IV*). We denied his petition, pointing out that because he had exhausted his appeal rights, habeas corpus was not available to challenge the conviction’s validity. Section 46-22-101(1), MCA. This Court observed that Doyle’s second petition for habeas corpus relief raised the same grounds. *Doyle v. Frink*, No. OP 13-0325, Order (Mont. Jun. 5, 2013) (*Doyle V*). We denied the petition as moot because the prior Order disposed of any remaining controversy.

In 2015, Doyle filed another petition for postconviction relief in the Butte-Silver Bow County District Court. The court denied his petition as untimely. Doyle appealed. *Doyle v. State*, 2017 MT 90N, 388 Mont. 553, 392 P.3d 613 (table) (*Doyle VI*). This Court pointed out that Doyle sought postconviction relief in the District Court in 2013, but he did not appeal that decision. *Doyle VI*, ¶ 2. We also noted Doyle’s prior petitions for habeas corpus relief with this Court in 2008 and 2013, and “habeas corpus is not available to attack the validity of a conviction of a person who has been adjudged guilty of an offense and exhausted the remedy of appeal.” *Doyle VI*, ¶ 2, n.3 (citations omitted). We explained that Doyle was procedurally barred to raise these claims in his third petition for postconviction

relief because his judgment became final several years prior. Sections 46-21-105(1)(b), 46-21-205(2), and 46-21-102(1), MCA. We affirmed the District Court.

In his instant petition, Doyle raises three grounds for relief. Doyle contends that his prosecution's commencement should have been by a grand jury or preliminary hearing and not by the court granting leave to file an information. Citing to Montana case law, he next argues that he could not be found guilty of deliberate homicide by accountability because he was not found guilty of deliberate homicide. *Demontiney v. Twelfth Judicial Dist. Ct.*, 2002 MT 161, 310 Mont. 406, 51 P.3d 476. Lastly, Doyle resurrects claims against his trial counsel for alleged failures about his criminal prosecution and resulting conviction. Doyle seeks relief: dismissal of his conviction and his release.

This Court has heard these arguments before from Doyle. His first ground fails because he is not entitled to the commencement of prosecution as he puts forth. *Doyle IV*. We held in *State v. Montgomery*, 2015 MT 151, ¶ 11, 379 Mont. 353, 350 P.3d 77, that the "Montana statute provides 'three different procedures by which the State can obtain the requisite probable cause determination before filing charges in district court[.]'" (internal citations omitted). "[A] defendant is not entitled to any specific procedure." *Montgomery*, ¶ 11 (citations omitted). We addressed his second ground squarely in his first appeal. *Doyle I*, ¶¶ 55-62. "The plain language of § 45-2-303, MCA, provides that a person may be convicted for accountability only 'upon *proof that the offense was committed . . .*'" *Doyle I*, ¶ 62 (emphasis in original). Doyle has raised or attempted to raise claims of IAC in his cases with this Court, which we have denied. *Doyle III* and *Doyle VI*.

Doyle is not entitled to habeas corpus relief or his release on the grounds presented. Section 46-22-101(1), MCA. We have informed Doyle before that habeas corpus relief is not available to attack one's conviction after exhaustion of his appeal rights. *Doyle II*, *Doyle III*, *Doyle IV*, *Doyle V*, and *Doyle VI*. Doyle presents the same issues that this Court has addressed since 2008. Pursuant to the doctrine of res judicata or claim preclusion, Doyle is barred from re-litigating these issues even in a petition for a writ of habeas corpus. *Montgomery*, ¶ 11 (citations omitted). Therefore,

IT IS ORDERED that Doyle's Petition for a Writ of Habeas Corpus is DENIED and DISMISSED.

IT IS FURTHER ORDERED that henceforth, prior to filing any original petition challenging his 2005 conviction and sentence with this Court, Doyle is directed to file a motion for leave to file the petition. The motion must be sworn under oath before a notary public, not exceed three pages in length, and make a preliminary showing that the motion has merit and meets the criteria to state a prima facie case under M. R. App. P. 14(5). Only when this Court has reviewed the motion and issued an order granting leave to file may the Clerk of this Court file the petition. Any other original petition that Doyle seeks to file shall be rejected forthwith, and the Clerk shall inform Doyle accordingly.

The Clerk is directed to provide a copy of this Order to counsel of record and to Keith E. Doyle, along with a copy of M. R. App. P. 14(5), for his reference.

DATED this 2nd day of July, 2019.

Justices

**Additional material
from this filing is
available in the
Clerk's Office.**