

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 11-0181

BARRY ALLAN BEACH,)
)
 Petitioner,)
)
 v.)
)
 MONTANA FIFTEENTH JUDICIAL DISTRICT)
 COURT, ROOSEVELT COUNTY, and THE)
 HONORABLE E. WAYNE PHILLIPS, Presiding Judge,)
)
 Respondents.)

ORDER
 FILED
 MAY 17 2011
 Ed Smith
 CLERK OF THE SUPREME COURT
 STATE OF MONTANA

Petitioner Barry Allan Beach has filed a petition for writ of supervisory control in regard to his petition for postconviction relief now pending in the Fifteenth Judicial District Court, Roosevelt County, as that court’s Cause No. 1068-C. Beach asks us to exercise supervisory control to review three orders entered by the District Court: specifically, the District Court’s orders denying Beach’s request for leave to amend his petition based on new evidence he has gathered since January of 2008; denying his motion to conduct additional pre-hearing discovery; and moving the location of the August 1, 2011 evidentiary hearing to Lewistown, in Fergus County, for the court’s convenience. We invited the District Court and the State of Montana to file responses to the petition for supervisory control, and the State has filed a response.

This is not the first time Beach has asked this Court to review a District Court decision on his petition for postconviction relief. In *Beach v. State*, 2009 MT 398, ¶ 51, 353 Mont. 411, 220 P.3d 667, we reversed the District Court’s denial of Beach’s petition and remanded for an evidentiary hearing on the newly-discovered evidence alleged in the petition. *Beach*, ¶ 50. The proceedings now pending in the District Court are a result of that opinion.

Supervisory control is an extraordinary remedy that is sometimes justified when urgency or emergency factors exist making the normal appeal process inadequate. The issues must involve purely legal questions. Additionally, in a civil case such as this postconviction relief matter, the petitioner must demonstrate that the district court is proceeding under a mistake of law and causing a gross injustice or that constitutional issues of state-wide importance are involved. *See* M. R. App. P. 14(3). Supervisory control is exercised only in extraordinary circumstances. *Safeco v. Montana Eighth Judicial Dist.*, 2000 MT 153, ¶ 14, 300 Mont. 123, 2 P.3d 834.

Beach asserts that, as to the three orders to which he objects, the normal appeal process is inadequate, the issues he raises are purely legal, and the orders implicate his fundamental right to due process, are of statewide importance, and cast public doubt upon the fairness and integrity of Montana's judicial system. As the State points out, however, none of the orders to which Beach objects conflicts with any specific instructions in our opinion in *Beach*. We instructed the District Court to "evaluate whether Beach's alleged new evidence constitutes actual new evidence" and to determine whether Beach's petition establishes that a "jury could find, in light of the newly discovered evidence," that Beach actually is innocent of his crime. *Beach*, ¶ 51. We did not dictate the process by which the District Court must proceed, and it has discretionary authority in matters of trial administration. *Eatinger v. Johnson*, 269 Mont. 99, 105, 887 P.2d 231, 235 (1994).

Additionally, the first two orders are discovery-related, an arena generally not reviewable in an original proceeding. *See Hegwood v. Montana Fourth Jud. Dist. Ct.*, 2003 MT 200, ¶ 6, 317 Mont. 30, 75 P.3d 308. The District Court's orders on those two matters are not denials with prejudice of the underlying motions. As to the third order, providing that the evidentiary hearing will be conducted in Fergus County rather than in Roosevelt County, the petition contains only conclusory allegations that logistical concerns and witness availability counsel against changing the location of the hearing. To exercise the extraordinary remedy of original jurisdiction, this Court needs to be presented with an

adequate record for it to review, and M. R. App. P. 14(5) so provides. Beach has failed to substantiate his claim with documentation from the record or with legal authority showing that holding the hearing in Lewistown constitutes an error of law that will cause a gross injustice.

We conclude Beach has failed to establish the criteria necessary to invoke this Court's exercise of supervisory control.

Therefore,

IT IS ORDERED that the petition for writ of supervisory control is DENIED.

The Clerk is directed to provide copies of this Order to counsel for Petitioner Beach, counsel for the State of Montana in Roosevelt County Cause No. 1068-C, and the Honorable E. Wayne Phillips, District Judge.

DATED this 17th day of May, 2011.

Beth Baker

Michael Wheeler

Jim Rice

Patricia Cotter

Brian Moran

Justices