

IN THE UTAH COURT OF APPEALS

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Carl Stanley Fleming,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20090560-CA
v.)	
)	F I L E D
State of Utah,)	(May 27, 2010)
)	
Respondent and Appellee.)	2010 UT App 140

Third District, Salt Lake Department, 080926839
The Honorable Denise P. Lindberg

Attorneys: Carl Stanley Fleming, Draper, Appellant Pro Se

Before Judges McHugh, Orme, and Thorne.

PER CURIAM:

Carl Stanley Fleming appeals the trial court's dismissal of his second petition for postconviction relief pursuant to the Post-Conviction Remedies Act (the PCRA), Utah Code sections 78B-9-101 to -405. We affirm.

Under the PCRA, a person is not eligible for relief on any ground that was raised or could have been raised at trial, on direct appeal, or in a prior petition for postconviction relief. See Utah Code Ann. § 78B-9-106(1) (2008). A court may consider whether a petition is procedurally barred, provided that the court gives the parties the opportunity to respond. See id. § 78B-9-106(2). Here, the trial court gave Fleming notice of its intent to dismiss this successive petition as procedurally barred because the grounds raised either were or could have been raised on direct appeal or in his prior petition. After Fleming's response, the trial court dismissed Fleming's second petition as procedurally barred.

On appeal, Fleming asserts several arguments, but the only issue properly before this court is whether the trial court erred in dismissing Fleming's petition as procedurally barred. The remaining arguments relate to the substantive claims of his petition and are not relevant in this appeal because the petition was dismissed without reaching the merits.

Fleming asserts that the trial court erred in failing to consider the merits of his petition under the interest of justice exception. However, there is no longer a statutory interest of justice exception in the PCRA. See id. § 78B-9-107. Furthermore, the previously existing exception only applied to untimely petitions. See id. § 78-35a-107(3) (2002). Fleming's petition was found to be procedurally barred, not time barred. Accordingly, different standards apply. See Gardner v. Galetka, 2004 UT 42, ¶ 11, 94 P.3d 263. Fleming has not addressed the standards for reviewing successive petitions.

In addition, although Fleming asserts that this petition contains new claims, he has not presented any facts that were not known long ago, and most of the facts presented were the basis for earlier claims. The "new" causes of action here are merely restatements of earlier claims. As a result, Fleming has shown no trial court error in dismissing his second petition as barred under section 78B-9-106.

Affirmed.

Carolyn B. McHugh,
Associate Presiding Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge