

IN THE UTAH COURT OF APPEALS

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Tony-Alexander Hamilton,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20070942-CA
v.)	
)	F I L E D
A. Chuck Bigelow, Warden,)	(July 17, 2008)
)	
Respondent and Appellee.)	2008 UT App 274

Fifth District, Beaver Department, 070500076
The Honorable Michael G. Westfall

Attorneys: Tony-Alexander Hamilton, Gunnison, Appellant Pro Se

Before Judges Greenwood, Thorne, and Orme.

PER CURIAM:

Tony-Alexander Hamilton appeals from the district court's order dismissing his petition for a writ of habeas corpus as frivolous. We affirm.

Hamilton raises only one issue on appeal that he sufficiently raised in his petition for a writ of habeas corpus. Specifically, Hamilton claims that he was denied the inherent and inalienable right to assert a defense of self-defense.

[I]ssues raised and disposed of on direct appeal of a conviction or sentence cannot be raised again in a petition for habeas corpus. Such issues are dismissed as an abuse of the writ, without a ruling on the merits. Additionally, issues that could and should have been raised on direct appeal, but were not, may not be raised for the first time in a habeas corpus proceeding, absent unusual circumstances.

Carter v. Galetka, 2001 UT 96, ¶ 6, 44 P.3d 626 (citing Gardner v. Holden, 888 P.2d 608, 613 (Utah 1994)). Hamilton's claim that he was denied the ability to assert self-defense as a defense to

the State's charges is barred by this rule. To the extent Hamilton is challenging the substance of the self-defense instruction given to the jury during his trial, that issue was already resolved by the Utah Supreme Court in his direct appeal. See State v. Hamilton, 2003 UT 22, ¶ 52, 70 P.3d 111 (concluding that Hamilton had waived the issue by failing to object to the instruction). To the extent Hamilton is raising any other issue concerning whether he was allowed to raise issues relevant to self-defense during the course of his trial, such issues could and should have been raised on direct appeal. Therefore, such issues were inappropriately raised in this habeas proceeding. See Carter, 2001 UT 96, ¶ 6.

Hamilton raises several other issues on appeal. However, such issues were not raised in his petition for a writ of habeas corpus. Because these issues were not raised in the district court, they will not be considered for the first time on appeal. See Monson v. Carver, 928 P.2d 1017, 1022 (Utah 1996) (noting general rule that "issues not raised at trial cannot be argued for the first time on appeal").

Affirmed.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge