

IN THE UTAH COURT OF APPEALS

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James B. Martin,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20050546-CA
v.)	
)	F I L E D
State of Utah,)	(August 18, 2005)
)	
Respondent and Appellee.)	2005 UT App 359

Third District, Salt Lake Department, 040917465
The Honorable Bruce C. Lubeck

Attorneys: James B. Martin, Draper, Appellant Pro Se
Mark L. Shurtleff and Brett J. DelPorto, Salt Lake
City, for Appellee

Before Judges Davis, Greenwood, and Thorne.

PER CURIAM:

James B. Martin appeals the dismissal of his petition for post-conviction relief. Martin pleaded guilty to two counts of sexual exploitation of a minor in December 2002 and was sentenced in February 2003. He did not appeal. In August 2004, he filed a petition for post-conviction relief.

Pursuant to Utah Code section 78-35a-107, a petition for post-conviction relief must be filed within one year of the date the cause of action accrued. See Utah Code Ann. § 78-35a-107(1) (2002). In Martin's case, the operative date would have been in March 2003, the date the time for filing a direct appeal passed. See id. § 78-35a-107(2)(a). Martin's petition should have been filed by March 2004 to be timely under the statute. However, Martin did not file his appeal until August 2004. As a result, his petition was clearly untimely.

However, if the trial court "finds that the interests of justice require, a court may excuse a petitioner's failure to file within the time limitations." Id. § 78-35a-107(3); see also Julian v. State, 966 P.2d 249, 254 (Utah 1998). Here, the trial court found that Martin had not shown any reason to excuse the late filing in the interests of justice. Under Utah Code section

78-35a-107, "the decision whether to excuse an untimely petition pursuant to the 'interests of justice' exception is a matter within the [trial] court's discretion." Julian, 966 P.2d at 254. Thus, an appellate court will reverse a trial court's decision regarding excusing an untimely filing only if the trial court abused its discretion. See id.

The trial court found that the facts and circumstances identified in Martin's petition were known to Martin well before the time to file his petition had run, and found no excuse for the untimely filing. Thus, the trial court determined that the interests of justice exception did not apply. Martin has not shown that the trial court abused its discretion in finding no excuse for the untimely filing. Martin essentially restates his positions from his petition but does not identify any standards for the "interests of justice" exception. Nor does he explain why he could not have timely filed his petition, nor provide any legal analysis of his conclusory argument. In sum, it appears that the trial court properly determined the petition to be untimely, and appropriately used its discretion in evaluating whether to apply the interests of justice exception.

Accordingly, the dismissal of Martin's petition is affirmed.

James Z. Davis, Judge

Pamela T. Greenwood, Judge

William A. Thorne Jr., Judge