

IN THE UTAH COURT OF APPEALS

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Robert B. Pedockie,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20100372-CA
v.	)	
	)	F I L E D
State of Utah,	)	(October 28, 2010)
	)	
Defendant and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2010 UT App 298</span>

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Second District, Ogden Department, 090907752  
The Honorable Ernest W. Jones

Attorneys: Robert B. Pedockie, Draper, Appellant Pro Se  
Mark L. Shurtleff and Erin Riley, Salt Lake City, for  
Appellee

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Before Judges Orme, Roth, and Christiansen.

PER CURIAM:

Robert B. Pedockie appeals the district court's order dismissing his petition for post-conviction relief. The matter is before the court on its own motion for summary disposition on the basis that the grounds for review are so insubstantial as not to merit further consideration by the court.

The district court dismissed Pedockie's claims because each was either frivolous or could have been raised in a direct appeal but was not. See Utah Code Ann. § 78B-9-106(1)(c) (2008) (stating that a person is ineligible for relief under the Post-Conviction Remedies Act if the ground relied upon "could have been but was not raised at trial or on appeal"). Pedockie has failed to challenge the district court's findings and conclusions in this regard. However, even if he had sufficiently challenged the district court's reasoning, each issue raised by Pedockie was known to him at the time of his direct appeal and could have been raised at trial or in his direct appeal but was not. See id. The lone possible exception in this case is if the failure to raise the issues on direct appeal was the result of ineffective assistance of appellate counsel. However, Pedockie did not sufficiently raise the issue of ineffective assistance of

appellate counsel in his original petition for post-conviction relief; accordingly, we cannot consider the issue on appeal.

In his petition, Pedockie set forth the following claim: "Did courts err by allow ineffective counsel? Defendant fired PDA before trial; plus PDA didn't do anything/call witnesses in fact told witnesses lies, etc." This claim does not mention appellate counsel or set forth any conduct that could be ascribed to appellate counsel. A claim for ineffective assistance of appellate counsel is distinct from a claim for ineffective assistance of trial counsel, especially if the two attorneys are different. Thus, reference to allegedly ineffective assistance of trial counsel is insufficient to raise an issue of ineffective assistance of appellate counsel. See generally Kell v. State, 2008 UT 62, ¶ 23, 194 P.3d 913 (stating that a "petitioner must set out all of his claims relating to the legality of his conviction or sentence in his petition for post-conviction relief and may not bring additional claims in later proceedings"); see also Utah R. Civ. P. 65C(d) ("The petition shall set forth all claims that the petition has in relation to the legality of the conviction or sentence."). Furthermore, Pedockie's attempt to raise the issue of ineffective assistance of appellate counsel in his response to the State's motion to dismiss was inadequate. See Lafferty v. State, 2007 UT 73, ¶ 23, 175 P.3d 530 ("Raising an issue for the first time in a memorandum opposing summary judgment without showing good cause violates the pleading requirements for post-conviction petitions.").

Affirmed.

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Gregory K. Orme, Judge

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Stephen L. Roth, Judge

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Michele M. Christiansen, Judge