

IN THE UTAH COURT OF APPEALS

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Edwin Pirela,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	
	)	Case No. 20050654-CA
v.	)	
	)	F I L E D
State of Utah,	)	(November 3, 2005)
	)	
Respondent and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2005 UT App 471</span>

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Third District, Salt Lake Department, 040922651  
The Honorable Paul G. Maughan

Attorneys: Edwin M. Pirela, Draper, Appellant Pro Se  
Mark L. Shurtleff and Christopher D. Ballard, Salt  
Lake City, for Appellee

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Before Judges Billings, Bench, and Greenwood.

PER CURIAM:

Edwin Pirela appeals the denial of his petition for post-conviction relief. This case is before the court on a sua sponte motion for summary disposition.

Pirela was convicted of aggravated sexual assault, a first degree felony, and aggravated assault, a third degree felony. We affirmed the convictions on direct appeal. See State v. Pirela, 2003 UT App 39, 65 P.3d 307. The district court denied the petition for post-conviction relief on grounds that relief was precluded under Utah Code section 78-35a-106(1), which states, in part, that a petitioner "is not eligible for relief under this chapter upon any ground that: . . . (b) was raised or addressed at trial or on appeal; [or] (c) could have been but was not raised at trial or on appeal." Utah Code Ann. § 78-35a-106(1) (2002). Although noting the exception to preclusion if the failure to raise a ground was the result of ineffective assistance of counsel, the district court noted that Pirela was represented by different counsel at trial and on direct appeal and that he did not claim that his appellate counsel was ineffective. In support of the dismissal, the district court ruled that Pirela either was aware or should have been aware of every alleged ground for relief at the time of judgment and that the claims on direct appeal were substantially similar to some claims in the petition. The district court also found that

Pirela "was afforded an adequate opportunity to appeal his conviction and to present his allegations of error." Accordingly, the district court held that assertion of the claims in the post-conviction petition was precluded because they could have been asserted at trial or on direct appeal.

The State urges this court to summarily dispose of the appeal on the basis that the record establishes that all of the claims were procedurally barred because they were either raised or could have been raised on direct appeal. We agree. Pirela opposes summary disposition and asserts that this court should hold an evidentiary hearing on his claims because they are disputed. This assertion is without merit because our appellate review is limited to review of the record created in the district court.

In this court, Pirela raises new statutory and constitutional claims that were not presented to the district court in his petition for post-conviction relief. It is well-settled that an appellate court will not consider claims raised for the first time on appeal. See State v. Amoroso, 1999 UT App 60, ¶7, 975 P.2d 505 ("As a general rule, appellate courts will not consider an issue raised for the first time on appeal."). He also claims that the district court was required to determine that he, as a criminal defendant, was competent to waive his right to counsel. Because Pirela was represented by appointed counsel in his criminal trial and direct appeal, we assume that Pirela refers to proceedings on his civil petition for post-conviction relief, during which he sought appointment of counsel. However, "there is no statutory or constitutional right to counsel in a civil petition for post-conviction relief." Hutchings v. State, 2003 UT 52, ¶20, 84 P.3d 1150. Accordingly, there was no requirement for the district court considering Pirela's petition to demonstrate a knowing waiver of a right to counsel.

We affirm the dismissal of the petition for post-conviction relief.

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Judith M. Billings,  
Presiding Judge

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Russell W. Bench,  
Associate Presiding Judge

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Pamela T. Greenwood, Judge