

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20080832-CA
v.	)	
	)	F I L E D
Brian K. Stack,	)	(December 18, 2008)
	)	
Defendant and Appellant.	)	2008 UT App 467

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Sixth District, Panguitch Department, 791602724  
The Honorable Paul D. Lyman

Attorneys: Brian K. Stack, Draper, Appellant Pro Se  
Mark L. Shurtleff and Annina M. Mitchell, Salt Lake  
City, for Appellee

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Before Judges Thorne, Bench, and McHugh.

PER CURIAM:

Brian K. Stack appeals from the district court's order denying his motion under rule 60(b)(3) of the Utah Rules of Civil Procedure for relief from the judgment and commitment order. This case is before the court on its own motion for summary disposition.

In June 2008, Stack filed a motion for relief from judgment under rule 60(b)(3) of the Utah Rules of Civil Procedure. In the motion, Stack asserted that the Board of Pardons and Parole (the Board) relied upon false, misleading, and slanderous materials at a review hearing held on November 2, 2006. Accordingly, he requested that his sentence be "nullified based on the fraud, presentation of false testimony and documentation, and the conspir[atorial] undertones that pervade [his] case." However, rule 60(b)(3) does not apply to Stack's case because Stack seeks review of a decision of the Board. Such decisions are governed by other specific statutory provisions and rules that preclude the use of rule 60(b)(3).

Although the rules of civil procedure may apply in criminal cases, the civil procedure rules apply only "where there is no other applicable statute or rule." Utah R. Civ. P. 81(e). Here,

review of decisions of the Board are governed by both statute and rule. Utah Code section 77-27-5(3) states: "Decisions of the [B]oard in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review." Utah Code Ann. § 77-27-5(3) (Supp. 2008). Therefore, decisions by the Board in such cases may only be reviewed through the use of an extraordinary writ. See Preece v. House, 886 P.2d 508, 511 (Utah 1994) (stating that appropriate remedy for the Board's failure to comply with rules is through a request for an extraordinary writ). To this end, rule 65B(d) of the Utah Rules of Civil Procedure sets forth the procedure for challenging a decision of the Board through the use of an extraordinary writ. See Utah R. Civ. P. 65B(d). Accordingly, because Stack was required to challenge the decision of the Board through an extraordinary writ, the district court did not err in denying Stack's motion made pursuant to rule 60(b)(3).

Affirmed.

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William A. Thorne Jr.,  
Associate Presiding Judge

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Russell W. Bench, Judge

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Carolyn B. McHugh, Judge