

IN THE UTAH COURT OF APPEALS

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Calvin Paul Stewart,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	
	)	Case No. 20100384-CA
v.	)	
	)	F I L E D
Rick Ellsworth,	)	(July 9, 2010)
	)	
Respondent and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2010 UT App 186</span>

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Eighth District, Manila Department, 100800003  
The Honorable Edwin T. Peterson

Attorneys: Calvin Paul Stewart, Manila, Appellant Pro Se

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Before Judges Davis, Orme, and Thorne.

PER CURIAM:

Appellant Calvin Paul Stewart appeals the denial of his petition for writ of habeas corpus collaterally challenging his Fourth District convictions. Stewart filed the underlying petition in the Eighth District, where he is serving his sentences in the Daggett County Jail. The petition also claimed that Stewart had been denied meaningful access to the courts because he does not have access to a law library or law-trained persons to assist him while incarcerated in Daggett County.

The Post-Conviction Remedies Act (PCRA) "establishes the sole remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies, including a direct appeal." Utah Code Ann. § 78B-9-102(1) (2008). Rule 65C of the Utah Rules of Civil Procedure governs proceedings in all petitions for post-conviction relief filed under the PCRA. See Utah R. Civ. P. 65C(a). A petition for post-conviction relief "shall be commenced by filing a petition with the clerk of the district court in the county in which the judgment of conviction was entered." Id. R. 65C(c). A district court may summarily dismiss a claim that has been adjudicated in a prior proceeding. See id. R. 65C(h)(1). "A person is not eligible for relief . . . upon any ground that . . . (c) could have been but was not raised at trial or on appeal [or] (d) was raised or addressed in any

previous request for post-conviction relief or could have been, but was not, raised in a previous request for post-conviction relief." Utah Code Ann. § 78B-9-106(1) (2008).

The petition for a writ of habeas corpus filed in the Eighth District collaterally challenges convictions entered in the Fourth District. Under the PCRA and rule 65C of the Utah Rules of Civil Procedure, a collateral challenge to a conviction or sentence must be asserted in the district where the convictions originated. See Utah R. Civ. P. 65C(c). The Fourth District convictions were the subject of (1) a direct appeal dismissed in our case number 20030757-CA due to Stewart's failure to file his opening brief and (2) the petition for post-conviction relief dismissed by the Fourth District in 2007 for failure to state a claim. After dismissal of his direct appeal, Stewart's sole remedy to collaterally challenge his convictions was the petition for post-conviction relief he filed in the Fourth District. Stewart did not appeal the Fourth District's dismissal of his post-conviction petition. The petition for writ of habeas corpus filed in the Eighth District attempted to collaterally challenge the convictions originating in the Fourth District and was procedurally improper. Stewart cannot obtain review of the same claims for post-conviction relief by characterizing them as requests for habeas corpus relief and filing them in a different judicial district. Finally, these claims are precluded because they could have been asserted on direct appeal or they actually were asserted, or could have been asserted, in a previous petition for post-conviction relief. See Utah Code Ann. § 78B-9-106(1)(c),(d). The petition was properly dismissed by the Eighth District insofar as it challenged the Fourth District convictions.

In his remaining claim, Stewart asserted that he was denied his right to access to the courts by being denied meaningful access to a law library or the assistance of a person trained in law. This claim is properly encompassed by rule 65B(b) of the Utah Rules of Civil Procedure and should be asserted "by filing a petition with the clerk of the court in the district in which the petitioner is restrained." Utah R. Civ. P. 65B(b)(2). Stewart claimed in conclusory fashion that he was damaged because his ability to pursue his claims was impeded and that he "could have prevailed and overcome procedural problems if [he] would have had meaningful access to the courts." Stewart paraphrased the holding of Bounds v. Smith, 430 U.S. 817 (1977), which stated that "[t]he fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in law." Id. at 828. The district court concluded that this language from Bounds was overruled in Lewis

v. Casey, 518 U.S. 343 (1996). The United States Supreme Court held in Lewis that "because Bounds did not create an abstract, freestanding right to a law library or legal assistance, an inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense." 518 U.S. at 351. Therefore, "the inmate must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim." Id. Because Stewart did not allege "that he suffered injury because of the prison's alleged inadequate law library or legal assistance program," the Eighth District dismissed that claim for failure to state a claim. Stewart did not allege any actual injury from lack of a law library or access to a law trained person while incarcerated at the Daggett County Jail and did not attempt to correlate this incarceration with any unsuccessful filings.

We affirm.

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James Z. Davis,  
Presiding Judge

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge