

IN THE UTAH COURT OF APPEALS

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Albert Dennis Zampedri,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20080225-CA
v.)	
)	F I L E D
Alfred Bigelow, Warden,)	(May 15, 2008)
)	
Respondent and Appellee.)	2008 UT App 178

Second District, Ogden Department, 070906836
The Honorable Michael D. Lyon

Attorneys: Albert Dennis Zampedri, Gunnison, Appellant Pro Se

Before Judges Billings, Davis, and McHugh.

PER CURIAM:

Appellant Albert Dennis Zampedri appeals the district court's dismissal of his Petition: Manifest Miscarriage of Justice. This case is before the court on a sua sponte motion for summary disposition.

In 2004, we affirmed Zampedri's convictions of attempted aggravated murder and attempted murder. See State v. Zampedri, 2004 UT App 348U (mem.). The Utah Supreme Court denied certiorari. See State v. Zampedri, 106 P.3d 743 (Utah 2005). Zampedri then filed a petition for habeas corpus relief in the United States District Court for the District of Utah. That federal district court denied the petition, finding that the claims were procedurally defaulted because Zampedri failed to raise them before the Utah Court of Appeals on direct appeal. See Zampedri v. Utah, 219 Fed. Appx. 803, 804 (10th Cir. 2007). A federal court "may not consider issues raised in a habeas petition that have been defaulted in state court on an independent and adequate procedural ground unless the petitioner can demonstrate cause and prejudice or a fundamental miscarriage of justice." Thomas v. Gibson, 218 F.3d 1213, 1221 (10th Cir. 2000). In other words, any claims that he did not raise in his direct appeal in this court were waived for purposes of a federal habeas corpus petition. After the federal district court denied his petition, Zampedri requested the Tenth Circuit Court of

Appeals to issue a certificate of appealability to allow him to appeal the federal district court's ruling. See Zampedri, 219 Fed. Appx. at 804. The Tenth Circuit denied the certificate of appealability and dismissed the appeal on grounds that Zampedri had not exhausted his state remedies with respect to all claims presented to the federal court and had thus "procedurally defaulted" on those claims. See id. at 804-05. The Tenth Circuit also rejected an "actual innocence" claim as not adequately supported. See id. at 805.

In an apparent attempt to address the grounds for dismissal of his federal habeas petition, Zampedri filed the Petition: Manifest Miscarriage of Justice in the Second District Court for the State of Utah in which petition he misrepresented that the Tenth Circuit Court of Appeals had ruled that there was sufficient evidence to bring his claims before a Utah court. He requested that he be allowed to present "new evidence" to support his claims of "ineffective assistance of counsel, witness tampering, perjury, drug addicted officer handling evidence, failure to fully investigate, conspiracy of counsels, misleading jury by prosecutor," as well as evidence to support his federal actual innocence claim. He further stated that the claims needed to be "raised in the lower court." Misconstruing the Tenth Circuit's ruling, Zampedri incorrectly believed that he was entitled to present new evidence of procedurally defaulted claims in the state courts in order to start over in the process of seeking federal habeas corpus relief.

The Second District Court correctly dismissed the petition for post-conviction relief as frivolous on its face. A petition is frivolous on its face if "the facts alleged do not support a claim for relief as a matter of law." Utah R. Civ. P. 65C(g)(2)(A). Zampedri is not entitled to habeas relief based upon conclusory allegations without stating a factual or legal basis for the claims. In addition, to the extent that the claims were determined on direct appeal, Zampedri is not entitled to seek post-conviction relief in the Utah state courts on the same grounds.¹

1. The decision on direct appeal determined and rejected claims that (1) the trial court erred in instructing the jury on the required mens rea; (2) trial counsel was ineffective by failing to challenge the mens rea instructions; (3) the evidence was insufficient to support the mens rea; and (4) trial counsel was ineffective by failing to move for a directed verdict. See State v. Zampedri, 2004 UT App 348U (mem.).

We affirm the dismissal of the post-conviction petition as frivolous on its face.

Judith M. Billings, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge