

THE UTAH COURT OF APPEALS

---

ALAPATI PAUL SCHWENKE,

*Petitioner and Appellant,*

*v.*

STATE OF UTAH,

*Respondent and Appellee.*

---

Per Curiam Decision

No. 20120967-CA

Filed January 25, 2013

---

Fourth District, Fillmore Department

The Honorable Donald J. Eyre Jr.

No. 120700036

---

Alapati Paul Schwenke, Appellant Pro Se

---

Before JUDGES ORME, THORNE, and CHRISTIANSEN.

---

PER CURIAM:

¶1 Alapati Paul Schwenke appeals the dismissal of his petition for a determination of factual innocence. This matter is before the court on Schwenke's motion for summary disposition seeking dismissal of the appeal so that he may petition the supreme court for certiorari review. We affirm the trial court's dismissal of the petition.

¶2 In his motion for summary disposition and memorandum in support, Schwenke fails to assert any trial court error in its rationale or decision to dismiss the petition for factual innocence. Rather, he merely reargues the matter as presented in the trial

*Schwenke v. State*

court. Indeed, his memorandum in support here is identical to the memorandum filed in the trial court. This is insufficient to raise an issue on appeal. *See Allen v. Friel*, 2008 UT 56, ¶ 14, 194 P.3d 303.

¶3 “[A]n appeal is a resort to [an appellate] court to review the decision of a [trial] court.” *Id.* Therefore, Utah appellate rules require the appellant to address reasons why the trial court’s decision should be overturned. *See id.* Here, Schwenke fails to address the trial court’s ruling that the issues raised in his innocence petition are procedurally barred because they had been previously litigated on direct appeal or in Schwenke’s first petition for postconviction relief. Absent an allegation of trial court error, there is simply no issue for appellate review. *See id.*

¶4 Affirmed.

---