

IN THE UTAH COURT OF APPEALS

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Roger Bryner,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20080065-CA	
v.)		
)	F I L E D	
Judge Denise P. Lindberg)	(February 22, 2008)	
and Judge William Barrett,)		
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Respondents.)		

Original Proceeding in this Court

Attorneys: Roger Bryner, Midvale, Petitioner Pro Se
 Brent M. Johnson, Salt Lake City, for Respondents

Before Judges Greenwood, McHugh, and Orme.

PER CURIAM:

Petitioner Roger Bryner filed a petition for writ of habeas corpus in which he claims that an order requiring him to comply with Utah's standards for civility and professionalism constitutes "unconstitutional punishment for life" and in which he seeks release from his captivity. In the only other claim for relief arguably referring to confinement, detention, or incarceration, he seeks a writ "to set Petitioner free from the unconstitutional restraints upon his freedoms" placed by Judges Lindberg and Barrett. The remaining claims seek (1) a declaration that the standards for civility and professionalism cannot be applied to him; (2) an order restraining the district court from considering contempt issues at a January 24, 2008 hearing; (3) a declaration that filing restrictions previously upheld by this court are unconstitutional; (4) a declaration that restrictions on argument allegedly imposed by the district court constitute "unequal application of law"; and (5) a declaration that an order restricting new case filings is not applicable to proceedings in state administrative agencies or federal courts. Based upon his claim that his petition seeks habeas corpus relief, Bryner seeks assignment of the petition to a district court judge other than Judges Lindberg or Barrett. See Utah R. App. P. 20 ("If a petition for writ of habeas corpus is filed in the appellate court . . . , it will be referred to the

appropriate district court unless it is shown on the face of the petition . . . that the district court is unavailable or other exigent circumstances exist.").

Bryner filed his petition under rule 20 of the Utah Rules of Appellate Procedure, which provides, in part:

The petition shall state in plain and concise language:

(c)(2)(A) The facts giving rise to each claim that the confinement or detention is in violation of a state order or judgment or a constitutional right established by the United States Constitution or the Constitution of the State of Utah or is otherwise illegal;

(c)(2)(B) whether an appeal was taken from the judgment or conviction pursuant to which a petitioner is incarcerated; and

(c)(2)(C) whether the allegations of illegality were raised in the appeal and decided by the appellate court.

Id. R. 20(c)(2) (emphasis added). Bryner is not incarcerated, confined, or detained, and his purported petition for habeas corpus relief is both frivolous and fails to satisfy the requirements of rule 20. Accordingly, we do not transfer the petition to the district court under rule 20.

The respondent judges construed the petition under rule 65B(b) of the Utah Rules of Civil Procedure, which governs claims of a wrongful restraint on personal liberty that do not result from a criminal conviction. See Utah R. Civ. P. 65B(b)(1). However, a remedy under that rule is available only "[w]here no other plain, speedy and adequate remedy is available." Id. R. 65B(a). Bryner claims that requiring him to comply with a prior order to produce the children's passports at a January 24, 2008 hearing was a "special contempt hearing" set without adequate notice. The district court's docket demonstrates that the district court specifically declined to rule on contempt sanctions. Nevertheless, Bryner appealed that ruling in our case number 20071002-CA, characterizing the ruling as a "contempt judgment." In his petition, Bryner also claims that application of standards of professionalism and civility to his in- and out-of-court behavior constitutes an inappropriate restraint of his freedom of expression. However, he raises similar claims in a pending appeal from a contempt order in case number 20070811-CA.

Even if we consider the purported petition for writ of habeas corpus under rule 65B(b), Bryner has not demonstrated that he lacks plain, speedy, or adequate remedies.

We deny the petition for writ of habeas corpus filed under rule 20 of the Utah Rules of Appellate Procedure. Bryner is not confined, detained, or incarcerated and is not eligible for habeas corpus relief under rule 20. The remaining claims for relief do not seek habeas corpus relief and are not properly included in the petition, and we therefore do not consider them.

Pamela T. Greenwood,
Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge