

IN THE UTAH COURT OF APPEALS

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Frank Lyle Dominguez,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20050966-CA	
v.)		
)	F I L E D	
Gary Heward, et al.,)	(January 20, 2006)	
)		
Respondents.)	<table border="1"><tr><td>2006 UT App 20</td></tr></table>	2006 UT App 20
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Second District, Ogden Department, 040905056
The Honorable W. Brent West

Attorneys: Frank Lyle Dominguez, Draper, Appellant Pro Se

Before Judges Greenwood, McHugh, and Orme.

PER CURIAM:

Frank Lyle Dominguez appeals the trial court's order dismissing his petition for post-conviction relief as frivolous. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review.

Post-conviction relief is not available on any ground that was raised on direct appeal or could have been raised on direct appeal but was not. See Utah Code Ann. § 78-35a-106(1) (2002); Myers v. State, 2004 UT 31, ¶11, 94 P.3d 211. Furthermore, this court generally will not address issues raised for the first time on appeal. See Monson v. Carver, 928 P.2d 1017, 1022 (Utah 1996) (noting general rule that "issues not raised at trial cannot be argued for the first time on appeal"). The issues Dominguez raises on appeal are barred under these principles.

Dominguez asserts that he received ineffective assistance of counsel at trial, alleging various errors. His claim for ineffective assistance could have been raised on direct appeal, however, because he had different appellate counsel. As a result, this issue is barred. See Utah Code Ann. § 78-35a-106(1)(c); Rudolph v. Galetka, 2002 UT 7, ¶7, 43 P.3d 467. Dominguez also asserts that the trial court erred in admitting testimony that Dominguez was in prison at the time of or before

trial. This issue was addressed by Dominguez's direct appeal and is thus also precluded from being raised in a post-conviction petition. See Utah Code Ann. § 78-35a-106(1)(b). Finally, Dominguez asserts his appellate counsel was ineffective because appellate counsel failed to raise trial counsel's ineffectiveness on direct appeal. However, Dominguez did not assert this issue in his petition below. Because this issue is raised for the first time on appeal, it is not properly before this court. See Monson, 928 P.2d at 1022. Each of the issues raised on appeal is procedurally barred, leaving no issue for review by this court.

Accordingly, the dismissal of Dominguez's post-conviction petition is affirmed.

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge