

IN THE UTAH COURT OF APPEALS

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Carl S. Fleming,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20080239-CA
v.)	
)	F I L E D
State of Utah,)	(November 6, 2008)
)	
Respondent and Appellee.)	<div style="border: 1px solid black; padding: 2px;">2008 UT App 407</div>

Third District, Salt Lake Department, 070901186
The Honorable Denise P. Lindberg

Attorneys: Carl S. Fleming, Draper, Appellant Pro Se
Mark L. Shurtleff, Karen A. Klucznik, and Erin Riley,
Salt Lake City, for Appellee

Before Judges Thorne, Bench, and Orme.

PER CURIAM:

Carl S. Fleming appeals the district court's order dismissing his petition for post-conviction relief. We affirm.

Fleming first asserts that the trial court erred in dismissing his petition for post-conviction relief because the jury allegedly received erroneous jury instructions on his charge of aggravated kidnapping. This court reviews an appeal from an order dismissing a petition for post-conviction relief for correctness without deference to the lower court's conclusions of law. See Myers v. State, 2004 UT 31, ¶ 9, 94 P.3d 211. The record is reviewed in the light most favorable to the trial court's findings and judgment, and this court will not reverse if there is a reasonable basis to support the trial court's dismissal of a petition for post-conviction relief. See id.

Under the Post-Conviction Remedies Act, a petitioner is not entitled to any relief on any ground that was raised or addressed by the trial court or on direct appeal. See Utah Code Ann. § 78B-9-106(1)(b) (Supp. 2008). Additionally, a petitioner is not entitled to any relief on any ground that could have been

raised at trial or on appeal but was not, unless the petitioner also demonstrates that he or she received ineffective assistance of counsel. See id. § 78B-9-106(1)(c); see also id. § 78B-9-106(3). A petitioner bears the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle him to relief. See id. § 78B-9-105(1) (Supp. 2008).

Fleming asserts that an erroneous jury instruction requires reversal of his conviction for aggravated kidnapping. He also asserts that his aggravated kidnapping charge should have merged with the aggravated robbery charge. However, these issues were previously raised in Fleming's direct appeal, and his conviction for aggravated kidnapping was affirmed. See State v. Fleming, 2005 UT App 394U, para. 5 (mem.) (per curiam). Thus, Fleming is not entitled to post-conviction relief on these grounds. See Utah Code Ann. § 78B-9-106(1)(b). Likewise, Fleming also asserts that he is entitled to relief under the Post-Conviction Remedies Act because he received ineffective assistance of trial counsel. Specifically, Fleming asserts that his trial counsel was ineffective for failing to "reiterate" Sharon Thompson's testimony that "she used Porter's card and personal identification number with his express permission." Fleming also asserts that his trial counsel was ineffective for "introducing harmful evidence and failing to recognize and assert helpful evidence." These issues were also previously raised in Fleming's direct appeal. Thus, Fleming is not entitled to post-conviction relief on these grounds. See id.

Fleming next asserts that his trial counsel was ineffective for failing "to object to strong issues within the sound strategy of setting up appeal." A party challenging the effectiveness of his or her trial counsel must point to specific instances in the record where he or she asserts that trial counsel was ineffective. See State v. Mahi, 2005 UT App 494, ¶ 20, 125 P.3d 103. Here, Fleming fails to meet this burden as he fails to point out specific instances in the record where his trial counsel failed to object to any allegedly "strong issues."

Lastly, Fleming asserts that his convictions should be reversed for "prosecutorial misconduct," for "constructive tampering of an amendment," and because there was insufficient evidence to support his conviction for aggravated kidnapping. "It is well established that a reviewing court will not address arguments that are not adequately briefed." State v. Green, 2004 UT 76, ¶ 15, 99 P.3d 820. Fleming fails to set forth adequate argument pertaining to these claims as required by rule 24(a)(9)

of the Utah Rules of Appellate Procedure. See Utah R. App. P. 24(a)(9). Thus, we decline to address them.¹

Affirmed.

William A. Thorne Jr.,
Associate Presiding Judge

Russell W. Bench, Judge

Gregory K. Orme, Judge

1. Fleming has raised other issues. We determine that such issues lack merit, and we decline to address them further. See State v. Carter, 888 P.2d 629, 648 (Utah 1994).