

IN THE UTAH COURT OF APPEALS

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Craig Ivan Gilbert,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20100063-CA
v.)	
)	
Peter Heinebecker, MD; Tamera)	F I L E D
Neilson; Wayne Brown, MD;)	(July 1, 2010)
Richard Doe, MD; Jane Doe; and)	
John Doe,)	2010 UT App 180
)	
Defendants and Appellees.)	

Fourth District, Provo Department, 090404327
The Honorable Claudia Laycock

Attorneys: Craig Ivan Gilbert, Provo, Appellant Pro Se

Before Judges Davis, McHugh, and Roth.

PER CURIAM:

Craig Ivan Gilbert appeals the Fourth District Court's order dismissing his writ of habeas corpus based upon lack of jurisdiction. We affirm.

On August 28, 2009, Judge Judith S. Atherton of the Third District Court found that Gilbert was not competent to proceed to trial. Accordingly, the Third District Court ordered that Gilbert be placed in the Utah State Hospital in order to restore competency. On November 23, 2009, Gilbert filed a petition for a writ of habeas corpus in the Fourth District Court. After reviewing the petition, the Fourth District Court determined that it lacked jurisdiction over the matter due to the criminal case pending in the Third District Court.

In his petition, Gilbert sought several forms of relief, which related to the Third District Court's order finding Gilbert not competent to stand trial and placing him in the state hospital to restore competency, including a new competency hearing, a review of his current treatment at the hospital, and his immediate release from the hospital. First, these issues can be adequately raised in the Third District Court or in a direct

appeal of that court's decisions. See Utah R. Civ. P. 65B(a) (stating that relief under the rule is only available where no other plain, speedy and adequate remedy is available); see also Carter v. Galetka, 2001 UT 96, ¶ 6, 44 P.3d 626 (stating that a petition for habeas corpus is not a substitute for direct appellate review); Johnson v. State, 945 P.2d 673, 675 (Utah 1997) ("A habeas corpus action cannot be raised until other forms of relief, including direct appeal, have been exhausted, absent unusual circumstances."); Gerrish v. Barnes, 844 P.2d 315, 319 (Utah 1992) ("Habeas corpus is not to be used to circumvent regular appellate review.").

Second, in asserting such claims, Gilbert was asking the Fourth District Court to review the prior decisions of the Third District Court. Such review is not appropriate when relief is available in the committing court or in the appropriate appellate court. See Utah R. Civ. P. 65B(a); see also Flores v. Lodge, 617 P.2d 837, 840 (Idaho 1980) (dismissing a petition for habeas corpus filed by a committed patient because claims were properly brought in the committing court). In Flores v. Lodge, the Idaho Supreme Court applied these principles to the evaluation of a writ proceeding initiated by a petitioner confined to a mental health facility by a different court.

[T]he committing court has continuing authority to act to insure that the patient is being treated. To permit an attack upon the patient's confinement by another court pursuant to habeas corpus would create a circumstance in which two courts of co-equal authority could conflict on the same subject matter. That is not desirable, and it is not necessary. The claim of the appellant that he is not being treated may be asserted in the committing court. Dissatisfaction with the decision in that court may be appealed to the Supreme Court. The appellant may not challenge the decision in habeas corpus proceedings in a different forum.

617 P.2d at 840. We find the reasoning of Flores to be persuasive. For the reasons stated above, we conclude that most of the issues raised in Gilbert's petition should have been raised in his criminal case currently pending before the Third District Court.

Gilbert raised two other issues in his petition. Gilbert's petition sought (1) access to a law library as a "necessary resource tool in the treatment and restoration of competency" and (2) the state hospital to pay the postage of pro se filings to

the United States Supreme Court.¹ To the extent that such issues can be interpreted as challenges to conditions of his confinement, they can properly be asserted in a rule 65B petition, see Petersen v. Utah Bd. of Pardons, 907 P.2d 1148, 1153 n.2 (Utah 1995) (stating that a petition for a writ of habeas corpus can challenge "the terms and conditions of confinement"), in the county of the petitioner's confinement, see Utah R. Civ. P. 65B(b)(2). The Fourth District Court serves the county where Gilbert is confined. Notwithstanding that conclusion, these claims too were properly dismissed by the Fourth District Court, albeit on different grounds. See generally DeBry v. Noble, 889 P.2d 428, 444 (Utah 1995) ("An appellate court may affirm a trial court's ruling on any proper grounds, even though the trial court relied on some other ground.").

The United States Supreme Court has stated that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Bounds v. Smith, 430 U.S. 817, 828 (1977). Thus, a prisoner is not entitled to access to a law library if he is represented by counsel. See Love v. Summit County, 776 F.2d 908, 915 (10th Cir. 1985); see also Degrate v. Godwin, 84 F.3d 768, 769 (5th Cir. 1996) (per curiam) (agreeing with four other circuits that a prisoner who waives appointed counsel representation in a criminal proceeding is not entitled to access to a law library). This is also true of persons who are confined in a mental health facility due to their unfitness to stand trial. See Johnson ex rel Johnson v. Brelje, 701 F.2d 1201, 1208 (7th Cir. 1983) (holding that persons that are unfit to stand trial are not entitled to a law library where they "are entitled to be represented by attorneys, and . . . adequate assistance of counsel will be available"), overruled on other grounds by Maust v. Headley, 959 F.2d 644 (7th Cir. 1992). Therefore, because Gilbert is represented by counsel in his criminal action, he is

¹Gilbert is currently represented by counsel in his criminal case.

not entitled to access to a law library and his claim was subject to dismissal on the merits.²

Affirmed.

James Z. Davis,
Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

Stephen L. Roth, Judge

²This same analysis applies equally to Gilbert's request for paid postage for pro se filings to the United States Supreme Court. The State has provided Gilbert with adequate legal assistance in the form of a public defender and provides funding for the reasonable cost of litigation, including postage. Accordingly, the State has met its burden in providing Gilbert with meaningful access to the courts. Cf. State v. Wareham, 2006 UT App 327, ¶ 33, 143 P.3d 302 ("When a defendant is represented by counsel, he generally has no authority to file pro se motions, and the court should not consider them.")