

IN THE UTAH COURT OF APPEALS

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Christopher Ray Marquez,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20050083-CA
v.)	
)	F I L E D
State of Utah,)	(July 29, 2005)
)	
Respondent and Appellee.)	2005 UT App 333

Second District, Ogden Department, 040908688
The Honorable W. Brent West

Attorneys: Christopher Ray Marquez, Gunnison, Appellant Pro Se

Before Judges Billings, Bench, and Greenwood.

PER CURIAM:

Christopher Ray Marquez appeals the denial of his petition for post-conviction relief. We affirm.

On April 23, 2003, Marquez was convicted of two counts of obstruction of justice in criminal cases 031901110 and 031901111, each a class B misdemeanor at the time of the charge. See Utah Code Ann. § 76-8-306 (2002).¹ No appeal was filed in either case.

On November 17, 2004, Marquez filed a single petition for post-conviction relief relating to both cases, pursuant to the Post-Conviction Remedies Act (the Act). See id. §§ 78-35a-101 to -110 (2002 and Supp. 2004). The district court found that the petition was untimely under the Act. The district court also found that the petition was without merit and dismissed the case.

"A petitioner is entitled to relief only if the petition is filed within one year after the cause of action has accrued." Id. § 78-35a-107(1). Because Marquez did not appeal the

¹The statute has since been amended to increase the penalty for the crime. See Utah Code Ann. § 76-8-306 (2004). However, the amendment does not affect the outcome of this appeal.

underlying judgments, his cause of action accrued "the last day for filing an appeal from the entry of the final judgment of conviction." Id. § 78-35a-107(2)(a). Thus, Marquez should have filed his petition on or before May 23, 2004. Although a court may excuse the failure to file within this time limitation if "the court finds that the interests of justice [so] require," id. § 78-35a-107(3), the district court found no reason to excuse Marquez's late filing. Marquez offers no reason on appeal why this determination was in error. Therefore, the district court correctly determined that Marquez's petition was untimely under the Act.

In addition, a petition for post-conviction relief is a collateral attack on a conviction and sentence and is not a substitute for direct appellate review. See Carter v. Galetka, 2001 UT 96, ¶6, 44 P.3d 626. The Act denies eligibility for post-conviction relief upon any ground that "may still be raised on direct appeal," "was raised or addressed at trial or on appeal," or "could have been but was not raised at trial or on appeal." Utah Code Ann. § 78-35a-106(1)(a)-(c); see also Rudolph v. Galetka, 2002 UT 7, ¶5, 43 P.3d 467 ("Any issues that were not addressed on direct appeal but could have been raised may not be raised for the first time in a post-conviction relief proceeding absent unusual circumstances."). The grounds set forth in Marquez's motion for post-conviction relief could have been raised at trial or on direct appeal. Therefore, the district court correctly denied post-conviction relief on this basis as well.

Accordingly, we affirm the order of the district court.

Judith M. Billings,
Presiding Judge

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge