

IN THE UTAH COURT OF APPEALS

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Michael L. Paolone,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Petitioner and Appellant,	)		
	)	Case No. 20050913-CA	
v.	)		
	)	F I L E D	
State of Utah,	)	(January 12, 2006)	
	)		
Respondent and Appellee.	)	<table border="1"><tr><td>2006 UT App 7</td></tr></table>	2006 UT App 7
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Second District, Farmington Department, 050700051  
The Honorable Rodney S. Page

Attorneys: Michael L. Paolone, Gunnison, Appellant Pro Se

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Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Michael L. Paolone appeals the dismissal of his petition for post-conviction relief. This matter is before the court on its own motion for summary disposition based upon the lack of a substantial question on appeal. See Utah R. App. P. 10(e). We affirm.

"We review an appeal from an order dismissing or denying a petition for post-conviction relief for correctness without deference to the lower court's conclusions of law." Rudolph v. Galetka, 2002 UT 7, ¶4, 43 P.3d 467. The district court summarily dismissed Paolone's petition for several reasons: (1) Paolone's claims were barred by the applicable statute of limitations; (2) Paolone's claims were not covered by the Post-Conviction Remedies Act; and (3) Paolone's claims have been or could have been adjudicated in his previous three petitions for post-conviction relief. In reviewing the issues contained in Paolone's petition, it is clear that each issue presented either had been or could

have been raised in a prior petition for post-conviction relief.<sup>1</sup>  
See Utah Code Ann. § 78-35a-106 (2002).

Prior to his current petition for post-conviction review, Paolone had filed three previous petitions for post-conviction relief. These petitions have repeatedly raised similar issues regarding ineffectiveness of counsel and the seating of a certain juror. In previously reviewing the claims relating to the juror, the district court determined that the juror at issue was properly a member of the jury and was not biased. The district court has also repeatedly denied Paolone's request for relief based upon alleged ineffectiveness of counsel. Accordingly, we conclude that Paolone's claims of ineffectiveness of counsel and the claims relating to the seating of the juror are barred because they were raised or could have been raised in previous petitions. See Hutchings v. State, 2003 UT 52, ¶21, 84 P.3d 1150 (affirming dismissal of claims that were or could have been raised in previous proceedings).

To the extent Paolone argues that he has new evidence regarding the seating of the juror, such evidence was merely cumulative and was immaterial based on the previous decisions of the district court concluding that the juror was properly seated. See Utah Code Ann. § 78-35a-104(e)(ii) (2002) (stating "newly discovered evidence" cannot be merely cumulative).

Paolone also argues that there were improper conversations between the juror and the judge immediately prior to his trial. However, there exists no evidence whatsoever in the record to support those claims. As such, the claims are speculative and there is no new evidence to support the claims. The claims were properly dismissed.

Finally, Paolone has failed to show good cause as to why the specific issues raised in this petition were not raised in one of his previous three petitions for post-conviction relief that set forth variations on these same issues. See Rudolph v. Galetka, 2002 UT 7 at ¶4 (recognizing that petitioner may file successive

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<sup>1</sup>By concluding that Paolone's petition was properly dismissed because each claim either was or could have been raised in a previous petition, there is no need to analyze or discuss the alternative reasons for dismissal articulated by the district court.

petitions if good cause exists). Accordingly, the district court properly dismissed Paolone's petition for post-conviction relief.

Affirmed.

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge