

IN THE UTAH COURT OF APPEALS

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Lemuel Prion,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant.	)	
	)	Case No. 20070249-CA
v.	)	
	)	F I L E D
State of Utah,	)	(May 10, 2007)
	)	
Respondent and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2007 UT App 163</span>

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Eighth District, Vernal Department, 070800083  
The Honorable John R. Anderson

Attorneys: Lemuel Prion, Draper, Appellant Pro Se

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Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

Lemuel Prion appeals the dismissal of his petition for postconviction relief. This case is before the court on a sua sponte motion for summary disposition.

On August 29, 1994, Prion pleaded guilty to possession of a dangerous weapon in a correctional facility, aggravated assault, and dealer in possession without affixing a tax stamp. Prion was sentenced on these charges on September 1, 1994, and March 15, 1995. Prion did not file a motion for postconviction relief until February 12, 2007. The district court dismissed Prion's petition on the grounds that relief was precluded under Utah Code section 78-35a-107(1), which states, "[a] petitioner is entitled to relief only if the petition is filed within one year after the cause of action has accrued." Utah Code Ann. § 78-35a-107(1) (Supp. 2006). The district court noted that, for purposes of this section, the cause of action accrues on "the date on which petitioner knew or should have known, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based." *Id.* § 78-35a-107(2)(e). However, the district court ruled that "[t]here is nothing in the petition, other than [Prion's] bald assertion otherwise, indicating that [Prion] couldn't have known about the facts underlying the petition earlier." Thus, the district court dismissed the petition on the basis that it was barred by the statute of limitations.

Prion argues that the district court erred by considering his petition on the merits without holding an evidentiary

hearing. This assertion is contrary to rule 65C of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 65C. Specifically, rule 65C(g)(1) provides:

The assigned judge shall review the petition, and, if it is apparent to the court that any claim has been adjudicated in a prior proceeding, or if any claim in the petition appears frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating either that the claim has been adjudicated or that the claim is frivolous on its face. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal. The order of dismissal need not recite findings of fact or conclusions of law.

Utah Rule Civ. P. 65C(g)(1).<sup>1</sup> Thus, the district court was not required to conduct a hearing and Prion has consequently failed to show that the district court erred when it considered Prion's petition without holding an evidentiary hearing.

We affirm the dismissal of the petition for postconviction relief.<sup>2</sup>

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Pamela T. Greenwood,  
Associate Presiding Judge

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Judith M. Billings, Judge

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<sup>1</sup>We note that even when a postconviction petition is fully briefed, rule 65C(j) specifically provides that the district court may either hold "a hearing or otherwise dispose of the case." Utah R. Civ. P. 65C(j). Thus, the district court has discretion whether to hold an evidentiary hearing, and the simple assertion that an evidentiary hearing should have been conducted is insufficient to show an abuse of this discretion.

<sup>2</sup>Prion filed his own motion for summary reversal on the basis of manifest error. See Utah R. App. P. 10(a)(2)(B). In light of the disposition of this appeal, Prion's motion is denied.

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James Z. Davis, Judge