

IN THE UTAH COURT OF APPEALS

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Floyd C. Robinson,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20090226-CA
v.)	
)	F I L E D
State of Utah,)	(June 18, 2009)
)	
Respondent.)	2009 UT App 166

Fifth District, St. George Department, 090500239
The Honorable James L. Shumate

Attorneys: Floyd C. Robinson, Gunnison, Appellant Pro Se

Before Judges Greenwood, Thorne, and Davis.

PER CURIAM:

Floyd Robinson appeals the trial court's dismissal of his petition for post-conviction relief. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review.

Robinson pleaded guilty to two criminal charges and was sentenced in December 2006. The sentence was formally entered in January 2007. Robinson filed his petition for post-conviction relief seeking to set aside his pleas no sooner than July 2008.¹ In a decision dated February 10, 2009, the trial court dismissed the petition as time barred. Robinson timely filed his notice of appeal.

Under the Post-Conviction Remedies Act, "[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. § 78B-9-107(1) (2008). For Robinson's purposes, the one year time period expired in February 2008, one year after the time to file an

¹The petition case was opened in January 2009, but some confusion over filing dates led the trial court to give Robinson the benefit of the doubt and consider the petition filed as of July 2008.

appeal expired. See id. § 78B-9-107(2)(a). Even if Robinson's petition was filed in July 2008, it was untimely under the statute. Accordingly, the trial court did not err in dismissing the petition as time barred.

Robinson does not address the rationale of the trial court in finding no excuse for the delay in filing but asserts that he thought a motion filed in July 2007 was a post-conviction petition. The July 2007 motion, which would have been timely if filed as a petition for post-conviction relief, could not be even generously construed as such a petition. First, it was filed as a motion in his criminal case, not as a petition under the Post-Conviction Remedies Act. Second, the motion requested very specific relief which did not include withdrawing his pleas. Robinson sought to obtain copies of his competency evaluations, which he believed were in the possession of his trial counsel. In addition to seeking documents, Robinson requested the appointment of counsel to assist him in filing a petition for post-conviction relief. The relief requested was not within the scope of a petition for post-conviction relief. Finally, given the request for counsel, Robinson clearly anticipated filing a separate post-conviction petition with the assistance of counsel. Accordingly, the July 2007 motion does not stand as a petition for post-conviction relief.

Affirmed.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

James Z. Davis, Judge