

IN THE UTAH COURT OF APPEALS

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Ricardo Rodriguez,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20100472-CA
v.)	
)	
State of Utah,)	F I L E D
)	(August 5, 2010)
)	
Respondent and Appellee.)	2010 UT App 217

Second District, Ogden Department, 100902538
The Honorable Scott M. Hadley

Attorneys: Ricardo Rodriguez, Draper, Appellant Pro Se

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

This matter is before the court on its own motion for summary disposition based upon lack of jurisdiction due to the absence of a final, appealable order. See Utah R. App. P. 3(a).

This court does not have jurisdiction to consider an appeal unless it is taken from a final judgment or order or qualifies for an exception to the final judgment rule. See Loffredo v. Holt, 2001 UT 97, ¶¶ 10, 15, 37 P.3d 1070. An order is final only if it disposes of the case as to all parties and "finally dispose[s] of the subject-matter of the litigation on the merits of the case." Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649 (internal quotation marks omitted); see also Utah R. Civ. P. 54(b) (stating that an order "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and rights and liabilities of all the parties").

The decision appealed from is not a final, appealable order because it does not dispose of all issues in the litigation. In its May 14, 2010 order, the district court dismissed one cause of action set forth by Rodriguez in his petition for post-conviction

relief.¹ However, the court determined that Rodriguez's other cause of action was not frivolous on its face and he could proceed on that cause of action. Because Rodriguez had not fully complied with the Post-Conviction Remedies Act, the court returned the petition to Rodriguez to allow him to amend the petition in order to comply with Rule 65C of the Utah Rules of Civil Procedure. The court did not dismiss the petition. Thus, the May 14, 2010 order did not finally resolve all issues in the litigation. Accordingly, this court lacks jurisdiction to hear this appeal. When this court lacks jurisdiction, it must dismiss the appeal. See Loffredo, 2001 UT 97, ¶ 11.

The appeal is dismissed without prejudice to the filing of a timely appeal after the district court enters a final, appealable order.

James Z. Davis,
Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

Gregory K. Orme, Judge

¹Rodriguez filed his action as a "Petition for Independent Action in Relief from Judgment and Order Pursuant to U.C.A. 1953 U.R. Civ. P. Rule 60(b)." However, because the Post-Conviction Remedies Act is the sole remedy for a person who challenges a conviction and who has exhausted all other legal remedies, the district court appropriately treated the petition as a petition for post-conviction relief.