

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20070306-CA
v.)	
)	F I L E D
Manuel Robeo Salcedo,)	(June 21, 2007)
)	
Defendant and Appellant.)	2007 UT App 220

Third District, Salt Lake Department, 961901214
The Honorable Randall N. Skanchy

Attorneys: Manuel Robeo Salcedo, Gunnison, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

Manuel Robeo Salcedo appeals the trial court's denial of his motion to vacate his convictions and sentence. This is before the court on its own motion for summary disposition.

In January 2007, Salcedo filed his motion pursuant to rule 60(b)(6) of the Utah Rules of Civil Procedure, asserting that his 2001 convictions should be vacated. See Utah R. Civ. P. 60(b). However, rule 60(b) does not apply in Salcedo's case because his is a criminal case and is governed by other specific statutory provisions and rules. Therefore, the trial court did not err in denying Salcedo's rule 60(b) motion.¹

Although the rules of civil procedure may apply in criminal cases, the civil procedure rules apply only "where there is no other applicable statute or rule." Utah R. Civ. P. 81(e). In essence, Salcedo is using rule 60(b) for post-conviction relief,

¹Although the trial court denied the motion because it was filed more than ninety days after Salcedo was sentenced, appellate courts may affirm a trial court's judgment on any ground, even if not relied on by the trial court. See State v. Rynhart, 2005 UT 84, ¶10, 125 P.3d 938.

which is provided for by statute in the Post-Conviction Remedies Act (PCRA). See Utah Code Ann. §§ 78-35a-101 to -304 (2002 & Supp. 2006). Because the PCRA specifies the remedies available to Salcedo to challenge his convictions, rule 60(b) is unavailable as a mechanism for relief.

The PCRA is Salcedo's sole remedy to challenge his convictions because he did not move to withdraw his pleas in a timely manner in his criminal case. See id. § 77-13-6(2)(c) (Supp. 2006). At the time Salcedo pleaded guilty, the statute provided that a request to withdraw a guilty plea must be made within thirty days after the entry of the plea. See id. § 77-13-6(2)(b) (1999). Salcedo did not move to withdraw his guilty pleas within that time. Utah Code section 77-13-6(2)(c) provides that "[a]ny challenge to a guilty plea not made within [thirty days after entry of the plea] shall be pursued under" the PCRA and Utah Rule of Civil Procedure 65C. See id. § 77-13-6(2)(c). As a result, Salcedo must challenge his pleas under the PCRA.

Primarily, Salcedo's motion invoked rule 60(b). In part, however, Salcedo also asserted that his sentence was illegal and should be corrected pursuant to rule 22(e) of the Utah Rules of Criminal Procedure. See Utah R. Crim. P. 22(e). To a great extent, Salcedo challenges his convictions under the guise of rule 22(e). But, rule 22(e) cannot be used to attack the underlying convictions. See State v. Reyes, 2002 UT 13, ¶¶3-4, 40 P.3d 630.

Salcedo also asserts, however, that his sentence is illegal because the weapons enhancements were not in place at the time Salcedo committed his crimes. His contention is incorrect. Salcedo committed his crimes in July 1995. The statutes defining the term "dangerous weapon," which would include knives, and providing for the sentence enhancements for using dangerous weapons during a second degree felony became effective on May 1, 1995. See 1995 Utah Laws ch. 244 §§ 1-2. As a result, the trial court properly included the enhancements in Salcedo's sentence.

Affirmed.

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge