

IN THE UTAH COURT OF APPEALS

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Elias Odicio Sanchez,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Petitioner and Appellant,	)	
	)	Case No. 20100461-CA
v.	)	
	)	F I L E D
State of Utah,	)	(September 10, 2010)
	)	
Respondent and Appellee.	)	<span style="border: 1px solid black; padding: 2px;">2010 UT App 247</span>

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Third District, Salt Lake Department, 090919219  
The Honorable L.A. Dever

Attorneys: Hakeem Ishola, West Valley City, for Appellant  
Mark L. Shurtleff and Christopher D. Ballard, Salt  
Lake City, for Appellee

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Before Judges McHugh, Thorne, and Roth.

PER CURIAM:

Elias Odicio Sanchez appeals the trial court's dismissal of his petition for postconviction relief as untimely. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review.

Sanchez asserts that the trial court erred in denying his petition as frivolous. However, the trial court dismissed the petition as untimely. Sanchez does not address the rationale for the trial court's decision, and as a result, fails to present a substantial question for review warranting further consideration by this court.

An appeal from a judgment on a petition for postconviction relief is reviewed for correctness. See Moench v. State, 2002 UT App 333, ¶ 4, 57 P.3d 1116. The trial court dismissed Sanchez's petition as untimely because the trial court determined that the petition was filed more than twelve years after the time to file his petition had expired. We agree.

Sanchez pleaded guilty to attempted distribution of a controlled substance, a third degree felony, in 1993. As part of the plea agreement, he was deported. The deportation document he

signed noted that, as an aggravated felon, he would have to apply to the Attorney General for permission to reenter the United States any time within the following twenty years.

In his petition for relief, Sanchez asserts that he received ineffective assistance of counsel regarding his 1993 plea because counsel told him that there would be no adverse immigration consequences as a result of his plea.<sup>1</sup> He argues that the petition is timely because he did not discover that counsel's information was incorrect until he applied for legal status in 2008. The trial court found, however, that Sanchez knew or should have known that the information was incorrect in October of 1993, when he was deported as a result of his conviction.

Under the Post-Conviction Remedies Act (the PCRA), a petitioner is eligible for relief only if the petition is filed within one year after "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." Utah Code Ann. § 78B-9-107(e) (2008). The PCRA applies to petitions filed after 1996, when it was enacted. See id. § 78B-9-103. Sanchez's petition was filed in 2009. Accordingly, the PCRA, including the statute of limitations, applies to his petition.

Sanchez asserts that trial counsel misinformed him of the immigration consequences of his plea, assuring him that there would be no adverse effects. However, Sanchez was, in fact, deported based on his conviction. In conjunction with the deportation, Sanchez signed a document specifying that he must seek specific permission to reenter the country for twenty years. Accordingly, regardless of what counsel may have told him, Sanchez was aware, or should have been aware, that counsel's advice that there would be no adverse immigration consequences was incorrect when he was deported. As a result, his cause of action regarding ineffective assistance of counsel accrued in October 1993. The statute of limitations under the PCRA, effective in July 1996, expired one year later in July 1997. Sanchez did not file his petition until 2009, twelve years later. The trial court did not err in finding Sanchez's petition untimely under the PCRA.

Sanchez further argues that counsel was ineffective because he did not tell Sanchez the conviction would result in a lifetime ban. However, Sanchez asserts that counsel assured him there would be no adverse immigration consequences of his plea. He was aware that this information was incorrect in 1993, whether it was

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<sup>1</sup>Although defense counsel denied this allegation, we accept it as true for the purposes of our analysis.

a lifetime ban or a twenty-year ban. It was apparent then that there were serious immigration consequences, in contrast to counsel's representations, and thus, the cause of action accrued.

Sanchez also argues that a new United States Supreme Court case mandates considering the petition and asserts other constitutional violations in conjunction with the dismissal of his petition. He asserts these claims for the first time on appeal. This court generally will not address issues raised for the first time on appeal. See Monson v. Carver, 928 P.2d 1017, 1022 (Utah 1996). "This rule applies to all claims, including constitutional questions." Id. Because these issues were not raised before the court below, they cannot be asserted as court error on appeal.

Affirmed.

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Carolyn B. McHugh,  
Associate Presiding Judge

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William A. Thorne Jr., Judge

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Stephen L. Roth, Judge