

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Scott Robert Shelton,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20090422-CA
v.)	
)	F I L E D
State of Utah,)	(August 13, 2009)
)	
Defendant and Appellee.)	2009 UT App 220

Third District, Salt Lake Department, 080924913
The Honorable Paul G. Maughan

Attorneys: Scott Robert Shelton, Beaver, Appellant Pro Se

Before Judges Greenwood, Bench, and Davis.

PER CURIAM:

Scott Robert Shelton appeals the district court's dismissal of his petition for post-conviction relief as frivolous. This matter is before the court on its own motion for summary disposition on the basis that the issues presented are so insubstantial as to not merit further proceedings. We affirm.

This court reviews an appeal from an order dismissing a petition for post-conviction relief for correctness. See Moench v. State, 2004 UT App 57, ¶ 8, 88 P.3d 353. Under rule 65C of the Utah Rules of Civil Procedure, a trial court must review a petition for post-conviction relief to determine if it is "frivolous on its face." Utah R. Civ. P. 65C(g)(1). A petition is frivolous on its face when, "based solely on the allegations contained in the pleadings and attachments," it appears that the facts alleged do not support a claim for relief as a matter of law, or the claims have no arguable basis in fact. Id. R. 65C(g)(2). To determine whether a petition is frivolous on its face, a trial court "need only determine whether the petition contains sufficient facts to state a cause of action." Moench v. State, 2002 UT App 333, ¶ 7, 57 P.3d 1116. The trial court must "ensure that the petitioner pleaded each element of the relief sought." Id. If the trial court finds the petition to be frivolous, it must dismiss the petition. See Utah R. Civ. P. 65C(g)(1).

Shelton asserts that he is entitled to post-conviction relief because after he entered a plea agreement with the State, he was not informed until the day of sentencing that one of his two victims had allegedly recanted her accusations of rape.¹ He contends that had he known that the victim recanted her allegation of rape, he would not have pleaded guilty to the three counts of forcible sexual abuse. The district court correctly concluded that Shelton failed to state a claim for relief. Shelton did not plead guilty to rape. Shelton pleaded guilty to three counts of forcible sexual abuse, only one of which involved the victim that had allegedly recanted her claim of rape. In regard to this victim, Shelton admitted to facts forming the basis of the forcible sexual abuse claim, including touching the breasts of the victim with the requisite intent under the statute. See Utah Code Ann. § 76-5-404(1) (2008) (setting forth elements of forcible sexual abuse). Thus, because the alleged recantation was unrelated to the charges for which Shelton pleaded guilty, the district court did not err in determining that Shelton was not entitled to post-conviction relief.

Shelton also asserted in his petition for post-conviction relief that he was not informed that he could withdraw his plea at any time prior to sentencing. More particularly, Shelton claimed that he did not know he could have filed a motion to withdraw his plea after allegedly learning that one of the victims had recanted her allegation of rape. The district court expressly determined that in Shelton's Statement in Support of his Guilty Plea, Shelton acknowledged, "I understand that if I want to withdraw my guilty plea, I must file a written motion to withdraw my plea(s) before sentence is announced." Thus, Shelton was fully aware that he had the ability to file a motion to withdraw his plea.

Affirmed.

Pamela T. Greenwood,
Presiding Judge

Russell W. Bench, Judge

James Z. Davis, Judge

¹Shelton does not contend that the victim withdrew her allegations of forcible sexual abuse.