

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20090413-CA
v.	)	
	)	F I L E D
William Sherratt,	)	(August 20, 2009)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2009 UT App 229</span>

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Fifth District, Cedar City Department, 991500552  
The Honorable Robert P. Faust

Attorneys: William Sherratt, Draper, Appellant Pro Se  
Mark L. Shurtleff and Kris C. Leonard, Salt Lake  
City, for Appellee

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Before Judges Bench, Davis, and McHugh.

PER CURIAM:

William Sherratt appeals from the district court's April 10, 2009 order resolving numerous post-conviction motions, which were filed in his criminal case. This matter is before the court on its own motion for summary disposition based upon the lack of a substantial question for review on appeal.

Sherratt claims that the district court erred in denying his "Complaint for Fraud on the Court; an Independent Action, Case 991500552; Motion to Vacate, Void Judgment-Void Ab Initio, Appearing on the Face of the Record; a Direct Attack; 'Quo Warranto' Motion" (Fraud and Jurisdiction Motion). This Fraud and Jurisdiction Motion asserted that Sherratt was filing an independent action for fraud on the court and void jurisdiction. As such, Sherratt requested that the district court vacate the judgment based upon lack of jurisdiction or, alternatively, based upon fraud on the court because numerous officials named in the Fraud and Jurisdiction Motion conspired to deprive Sherratt of his constitutional rights.<sup>1</sup> The district court correctly

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<sup>1</sup>Sherratt's purported action for fraud on the court named various entities as respondents or defendants including, Cedar  
(continued...)

determined that Sherratt was not entitled to relief for fraud on the court because he filed the motion in his original criminal case instead of filing a new action. See Shaw v. Pilcher, 9 Utah 2d 222, 341 P.2d 949, 950 (Utah 1959) (stating that "where 'fraud upon the court' is the gravamen of the proceeding, such proceeding must be pursued in an independent action by filing a separate suit"). The district court, therefore, properly denied the motion.

Sherratt also claimed in his Fraud and Jurisdiction Motion that the district court never had jurisdiction over his criminal case because the court's jurisdiction was never invoked by a sworn information. As the district court correctly concluded, Sherratt was precluded from again raising the jurisdiction issue after this court had previously addressed the jurisdiction argument on the merits. See Sherratt v. Friel, 2006 UT App 286U, para. 4 (mem.) (per curiam). Accordingly, the district court appropriately denied relief on this ground. Because other arguments raised in the Fraud and Jurisdiction Motion, as well as in an order to show cause filed after the State's initial response, were directly tied to either the fraud on the court or the jurisdiction argument, the district court properly denied these claims as well.

Sherratt next asserts that the district court erred in denying his Petition for Factual Innocence and his related motions "to Find Petitioner Innocent without Holding a Hearing" and "for Order to Show Cause Why Default Judgment Should Not Issue, Due to Deficient Service of Reply, or Delay in Reply." The two motions were based upon Sherratt's belief that the State's reply to his Petition for Factual Innocence was untimely. Accordingly, Sherratt contended that he should be awarded a default judgment. The district court resolved the petition and motions on the substance of Sherratt's arguments. However, there is a more fundamental problem with Sherratt's petition; it was improperly filed in his criminal case. The petition should have been brought in a separate civil proceeding as set forth in the Post-Conviction Remedies Act and rule 65C of the Utah Rules of Civil Procedure. See Utah Code Ann. §§ 78B-9-101 to -405 (2008); Utah R. Civ. P. 65C. The statute under which Sherratt sought relief, Utah Code section 78B-9-402, specifically requires that petitions based upon allegations of factual innocence be brought in compliance with rule 65C of the Utah Rules of Civil Procedure. See Utah Code Ann. § 78B-9-402(4). Sherratt failed to follow the procedure set forth in rule 65C by filing his petition in his

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<sup>1</sup>(...continued)

City Corporation, State of Utah, Iron County Attorney, Iron County Sheriff, and the Iron County Commission.

criminal case. Thus, because the statute required Sherratt to file his petition in a separate proceeding, his petition for actual innocence was not properly filed as part of Sherratt's criminal case. Hence, there was no error in dismissing the petition and denying Sherratt's accompanying motions.

Affirmed.

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Russell W. Bench, Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge