

IN THE UTAH COURT OF APPEALS

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William Sherratt,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellant,	)	
	)	Case No. 20090770-CA
v.	)	
	)	
Mark Shurtleff, Attorney	)	F I L E D
General; and Annina Mitchell,	)	(November 27, 2009)
Solicitor General,	)	
	)	2009 UT App 354
Defendants and Appellees.	)	

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Third District, Salt Lake Department, 070906498  
The Honorable Robert P. Faust

Attorneys: William Sherratt, Draper, Appellant Pro Se  
Mark L. Shurtleff and Peggy E. Stone, Salt Lake City,  
for Appellees

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Before Judges Greenwood, Orme, and Thorne.

PER CURIAM:

William Sherratt appeals the trial court's dismissal of his complaint. This is before the court on Defendants' motion for summary disposition asserting that there is no substantial question for review. We affirm.

Sherratt's complaint, in essence, is based on allegations that his conviction was wrongful and that the Utah Attorney General's office failed to pursue a complaint Sherratt filed pursuant to Utah Code section 77-6-2. See Utah Code Ann. § 77-6-2 (2008). Both claims fail.

To the extent the complaint is based on Sherratt's conviction, the trial court properly dismissed the complaint on res judicata grounds, specifically, issue preclusion. Issue preclusion "prevents parties . . . from relitigating issues which were once adjudicated on the merits and have resulted in a final judgment." Brigham Young Univ. v. Tremco Consultants, Inc., 2005 UT 19, ¶ 27, 110 P.3d 678. Sherratt has previously challenged his conviction on both direct appeal and in a postconviction proceeding. Sherratt acknowledged in his complaint that the

issues raised had been addressed in a petition for postconviction relief. The validity of his conviction has been conclusively determined through prior litigation. Accordingly, he cannot now assert as a basis for civil damages that he was wrongly convicted.

Sherratt also asserts that the Attorney General's office failed to prosecute a complaint for the removal of an officer. Public officers not subject to impeachment may be removed from office through judicial proceedings under Utah Code sections 77-6-1 through -9. See Utah Code Ann. §§ 77-6-1 to -9 (2008). In 2004, Sherratt filed an accusation seeking the removal of an Iron County sheriff and containing allegations of malfeasance against the sheriff and a county prosecutor. Because the complaint included allegations against the county prosecutor, the trial court referred it to the Attorney General's office for investigation as required under statute. See id. § 77-6-4(2)(b) (providing that if an accusation is made against a county attorney, the trial court must refer the accusation to the Attorney General's office, "who shall investigate and may prosecute the accusation.").

Sherratt's claim in this regard is barred by the Governmental Immunity Act (the Act). See Utah Code §§ 63G-7-101 to -904 (2008 & Supp. 2009). The scope of the Act is intentionally broad. The Act states, "this single, comprehensive chapter governs all claims against governmental entities or against their employees or agents arising out of the performance of the employee's duties, within the scope of employment, or under color of authority." Id. § 63G-7-101 (2008). Claim means "any asserted demand for or cause of action for money or damages . . . against a governmental entity or against an employee in the employee's personal capacity." Id. § 63G-7-102.

Sherratt's complaint asserts a claim for money damages against state employees for actions arising out of the performance of their duties. Accordingly, the Act applies. Further, the action complained of here is immune under the Act. The essence of the claim is that the Attorney General abused his discretion in failing to prosecute Sherratt's 2004 complaint for removal. However, under the Act, immunity is reserved for "the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused."

Id. § 63G-7-301(5)(a).<sup>1</sup> As a result, Sherratt's claim against Defendants is barred.<sup>2</sup>

Affirmed.

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Pamela T. Greenwood,  
Presiding Judge

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge

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<sup>1</sup>Immunity is also retained for claims arising from "malicious prosecution" or "false imprisonment," Utah Code Ann. § 63G-7-301(5)(b) (2008), and for "the institution or prosecution of any judicial . . . proceeding, even if malicious or without probable cause," id. § 63G-7-301(5)(e). The entirety of Sherratt's complaint also falls within these immunity provisions.

<sup>2</sup>The trial court determined that Defendants were immune under common law prosecutorial immunity. However, this court may affirm a trial court's order on any ground apparent in the record, even if different than the basis for the trial court's ruling. See State v. Rynhart, 2005 UT 84, ¶ 10, 125 P.3d 938.