

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

William Sherratt,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20060167-CA
v.)	
)	F I L E D
Clint Friel,)	(July 7, 2006)
)	
Respondent.)	2006 UT App 286

Fifth District, Cedar City Department, 020500440
The Honorable G. Michael Westfall

Attorneys: William Sherratt, Draper, Petitioner Pro Se

Before Judges Greenwood, Davis, and Thorne.

PER CURIAM:

William Sherratt appeals the trial court's denial of his motion for relief pursuant to rule 60(b)(4) of the Utah Rules of Civil Procedure. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review. See Utah R. App. P. 10(e).

Sherratt was convicted of two first degree felonies. After his convictions were affirmed on direct appeal, he filed a petition for post-conviction relief asserting, among other things, that the criminal court lacked jurisdiction to convict him because the charging information was defective. The trial court dismissed the petition as frivolous. On appeal, this court affirmed the dismissal of the petition. See Sherratt v. Friel, 2003 UT App 269 (per curiam).

Sherratt then filed a motion in the petition trial court, seeking to vacate his convictions pursuant to rule 60(b)(4), again asserting that the criminal court lacked jurisdiction. The petition trial court denied the motion, determining that the motion was not properly before the it because the motion challenged the jurisdiction of a different court in a separate case. Sherratt then filed this appeal.

In his response to this court's motion, Sherratt argues that the charging information was defective and, thus, the criminal court never obtained jurisdiction. He does not address the trial court's rationale for denying the motion, but re-argues his position. In failing to address the trial court's reasons for denying his motion, Sherratt fails to present a substantial question for review because he does not identify a legal error for review. See Utah R. App. P. 10(e).

Moreover, it is clear from the record that Sherratt's motion fails on its merits. This court may affirm a trial court's judgment on any legal ground or theory apparent on the record, even if it is not the basis for the trial court's ruling. See State v. Rynhart, 2005 UT 84, ¶10, 125 P.3d 938. The asserted ground for Sherratt's motion for relief--that the criminal court lacked jurisdiction due to a defective information--has already been addressed and rejected on its merits. In affirming the dismissal of Sherratt's petition, this court noted that Sherratt had waived his claim regarding a defective information because he failed to raise it before trial. See Sherratt, 2003 UT App 269; see also State v. Smith, 700 P.2d 1106, 1109 (Utah 1985) (holding that the failure to object to a defective information prior to trial constitutes a waiver); Cf. State v. Schreuder, 712 P.2d 264, 271 (Utah 1985) (noting that an illegal arrest does not void a subsequent conviction). The decision of this court determining Sherratt's claim on its merits precludes the issue from being raised again in any motion or subsequent petition.

Accordingly, the denial of Sherratt's rule 60(b)(4) motion is affirmed.

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

William A. Thorne Jr., Judge