

IN THE UTAH COURT OF APPEALS

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Calvin Paul Stewart,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20100075-CA
v.)	
)	
Rick Ellsworth and Board of)	F I L E D
Pardons and Parole,)	(June 10, 2010)
)	
Respondents and Appellees.)	2010 UT App 150

Eighth District, Manila Department, 090800017
The Honorable Edwin T. Peterson

Attorneys: Calvin Paul Stewart, Manila, Appellant Pro Se

Before Judges Davis, Orme, and Thorne.

PER CURIAM:

Appellant Calvin Paul Stewart appeals the denial of his petition for writ of habeas corpus, in which he sought immediate release from prison and termination of his sentence on twenty-five felony convictions. Based upon its content, we characterize the petition as a petition for extraordinary relief directed to the Utah Board of Pardons and Parole (the Board) filed pursuant to rule 65B(d)(2)(D) of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 65B(d)(2)(D) (allowing relief where the Board has exceeded its jurisdiction or failed to perform an act required by constitutional or statutory law). Because Stewart's claims "do not involve the legality of his detention, the conditions of his imprisonment, or [a challenge to a] court-imposed sentence, the writ of habeas corpus is not available." Padilla v. Utah Bd. of Pardons, 947 P.2d 664, 667 (Utah 1997). Therefore, Stewart's claims challenging actions taken by the Board of Pardons are reviewable only under rule 65B(d). See id.

Stewart claims that the Board abused its discretion and exceeded its jurisdiction by allowing two witnesses to speak at his parole hearing whom Stewart claims were not victims of any of the crimes that form the basis for his convictions. He claims that the witnesses were not victims under the applicable statutory definition and should not have been allowed to speak.

The term "victim" is defined by statute as "a person against whom the defendant committed a felony or class A misdemeanor offense, and regarding which offense a hearing is held under this chapter." Utah Code Ann. § 77-27-1(13) (2008). However, as the district court noted, the Board has promulgated a rule expanding the definition of the term "victim" for purposes of parole hearings to include, "[i]n the discretion of the Board, any person, of any age, against whom a related crime or act is alleged to have been perpetrated or attempted." Utah Admin. Code R671-203-1. Utah Code section 77-27-9(4)(a) grants the Board authority "to adopt rules consistent with law for . . . the conduct of proceedings before it, the parole and pardon of offenders, the commutation and termination of sentences, and the general conditions under which parole may be granted and revoked." Utah Code Ann. § 77-27-9(4)(a). Furthermore, Utah Code section 77-27-9(4)(b) directs the Board to promulgate rules that "shall ensure an adequate opportunity for victims to participate at hearings held under this chapter." *Id.* § 77-27-9(4)(b). Accordingly, the district court ruled that the Board did not exceed its jurisdiction or abuse its discretion by allowing the witnesses to appear and speak at the parole hearing.

Stewart argues on appeal only that the two witnesses were not victims of any of the offenses that resulted in the convictions that were the subject of the parole hearing. He did not explain in the petition what his relationship was to the two witnesses or allege, let alone demonstrate, that they were not within the expanded definition of victim contained in R671-203-1 of the Utah Administrative Code. Thus, the district court did not err in denying Stewart's petition.

The district court also did not err in determining the petition for extraordinary relief without holding a hearing. Rule 65B(d) of the Utah Rules of Civil Procedure does not mandate a hearing but states that the court "may issue a hearing order requiring the adverse party to appear at the hearing on the merits." Utah R. Civ. P. 65B(d)(3) (emphasis added) (previous version at Utah R. Civ. P. 65B(e)). Furthermore, although there is no procedure delineated in rule 65B(d) "for dismissing a petition on the basis that it is frivolous on its face," the Utah Supreme Court has held that "[a] petition of any nature which fails to state a claim may be dismissed." Lancaster v. Utah Bd. of Pardons, 869 P.2d 945, 947 (Utah 1994). Accordingly, dismissal of a petition under rule 65B(d) for failure to state a claim is "proper despite the lack of express authority to dismiss frivolous petitions" under rule 65B(d). *Id.*

Finally, Stewart argues that he was denied access to the courts to pursue his claim because he did not have access to an adequate law library or the assistance of a law-trained person.

Because this issue is beyond the scope of the present petition, which sought review of the actions of the Board under rule 65B(d), the issue was not properly before the district court and was not considered by that court. We therefore do not address it.

Affirmed.

James Z. Davis,
Presiding Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge