

IN THE UTAH COURT OF APPEALS

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Darrell Wayne Stuart,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20090524-CA
v.)	
)	F I L E D
State of Utah,)	(September 17, 2009)
)	
Respondent and Appellee.)	2009 UT App 267

Third District, West Jordan Department, 080415971
The Honorable Royal I. Hansen

Attorneys: Darrell Wayne Stuart, Gunnison, Appellant Pro Se
Mark L. Shurtleff and Erin Riley, Salt Lake City, for
Appellee

Before Judges Bench, Orme, and McHugh.

PER CURIAM:

This case is before the court on a sua sponte motion for summary disposition and on Petitioner Darrell Wayne Stuart's motion for summary reversal.

Stuart pleaded guilty to two counts of sexual abuse of a child, second degree felonies. Stuart did not file a timely motion to withdraw his pleas nor did he appeal. Instead, he filed this petition for postconviction relief. The State moved to dismiss the petition, arguing that Stuart was not eligible for postconviction relief on the basis that the claims could have been raised at trial or on a direct appeal. See Utah Code Ann. § 78B-9-106(1)(b)-(c) (2008).

Stuart alleges for the first time on appeal that (1) he intended to withdraw his guilty plea but his appointed counsel would not reply to him, (2) counsel failed to investigate claims that Stuart's ex-wife fabricated the charges against him, (3) counsel failed to cross-examine the child witness, (4) there were errors in proceedings regarding his pretrial release on bail, (5) counsel did not investigate or pursue his claims of innocence, and (6) counsel failed to advise him of the sentencing guidelines. "[A]s a general rule, claims not raised before the

trial court may not be raised on appeal." Tschaggeny v. Millbank Ins. Co., 2007 UT 37, ¶ 20, 163 P.3d 615. The preservation rule gives "the trial court an opportunity to address the claimed error and, if appropriate, correct it." Id.

Stuart also claims that he was not given adequate notice of the telephonic hearing on his petition. This claim is without merit. The district court elected to hold a telephonic hearing after Stuart indicated that he would not attend a hearing in person. This action was intended to benefit Stuart, and it occurred after he had waived the right to attend the hearing.

Even assuming that Stuart's claims are not procedurally barred, Stuart has established no grounds for postconviction relief. The written plea statement and statements from the court correctly advised him of the possible sentences and advised him that the judge was not bound by any opinion or recommendation from counsel. Stuart did not establish either that he asked his counsel to file a motion to withdraw or that his counsel was aware of any reason to file a motion to withdraw. Finally, Stuart suffered no prejudice because he did not show that there is a reasonable probability the court would have granted his motion to withdraw his guilty plea. See State v. Munson, 972 P.2d 418, 422 (Utah 1988).

Stuart also moves for summary reversal of the dismissal of his petition for postconviction relief "on grounds that being indigent, transcripts and oral arguments were not provided to him." Stuart was not entitled to a transcript or transportation to a hearing at public expense in the postconviction proceedings, which are civil in nature. We deny the motion for summary reversal.

Affirmed.

Russell W. Bench, Judge

Gregory K. Orme, Judge

Carolyn B. McHugh, Judge