

IN THE UTAH COURT OF APPEALS

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Chris Williams,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner and Appellant,)		
)	Case No. 20061018-CA	
v.)		
)	F I L E D	
State of Utah and Warden)	(February 15, 2007)	
Lowell Clark,)		
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Respondents and Appellees.)		

Third District, Salt Lake Department, 050920799
The Honorable John Paul Kennedy

Attorneys: Chris Williams, Gunnison, Appellant Pro Se
Mark L. Shurtleff and Erin Riley, Salt Lake City,
for Appellees

Before Judges Bench, McHugh, and Thorne.

PER CURIAM:

Chris Williams appeals the district court's dismissal of his petition for postconviction relief. This case is before the court on a sua sponte motion for summary disposition. We affirm.

In June 2000, Williams was convicted by a jury of rape of a child, a first degree felony; sexual abuse of a child, a second degree felony; and three misdemeanor counts. Williams timely appealed his convictions, which were affirmed by this court on November 29, 2001. See State v. Williams, 2001 UT App 360. Williams filed a petition for writ of certiorari with the Utah Supreme Court that was denied on April 2, 2002.

On November 23, 2005, Williams filed his petition for postconviction relief. Williams's petition alleged various grounds for relief, including a request for a "de novo" review, a claim that the evidence was insufficient to support his convictions, and claims for ineffective assistance of both trial and appellate counsel. The district court dismissed the petition on the basis that it was untimely under Utah Code section 78-35a-107(1). See Utah Code Ann. § 78-35a-107(1) (Supp. 2006).

Pursuant to section 78-35a-107, a petition for post-conviction relief must be filed within one year of the date the cause of action accrued. See id. Williams's petition was clearly untimely, as it was filed over three years after the date of the denial of his petition for writ of certiorari. See id. § 78-35a-107(2)(d).

However, if the trial court "finds that the interests of justice require, a court may excuse a petitioner's failure to file within the time limitations." Id. § 78-35a-107(3). What constitutes the "interests of justice" under section 78-35a-107(3) "is a legal determination to be made in accordance with precedent from this court. Because legal determinations concerning the proper interpretation of [a] statute which grants the trial court discretion are reviewed for correctness, we apply a de novo standard here." Adams v. State, 2005 UT 62, ¶8, 123 P.3d 400 (quotations and citations omitted); see also Gardner v. Galetka, 2004 UT 42, ¶7, 94 P.3d 263 ("We review an appeal from an order dismissing or denying a petition for post-conviction relief for correctness without deference to the lower court's conclusions of law.").

"An analysis of what constitutes an exception in the 'interests of justice' should involve examination of both the meritoriousness of the petitioner's claim and the reason for an untimely filing." Adams, 2005 UT 62 at ¶16. The trial court thoroughly examined each of these matters. For instance, Williams asserted in his petition that he was unable to timely file the petition because it took him three years to obtain his paperwork. The trial court found that the facts and circumstances identified in Williams's petition were known to Williams well before the time to file his petition had run and that "if there were problems obtaining certain documents . . . Williams could have raised those issues in his petition." Thus, the trial court found no excuse for the untimely filing.

In addition, the trial court examined the merits of Williams's claims. The court noted that each of Williams's claims, aside from a claim for ineffective assistance of appellate counsel, were raised or could have been raised during the course of his direct appeal. See Utah Code Ann. § 78-35a-106(1)(b)-(c) (2002) ("A person is not eligible for relief under this chapter upon any ground that . . . was raised or addressed . . . on appeal [or] could have been but was not raised . . . on appeal."). The court also held that Williams's claim regarding ineffective assistance was insufficient to state a claim under Strickland v. Washington, 466 U.S. 668 (1984). As a result, the

trial court held that Williams failed to meet the interests of justice exception.

Williams has failed to show that the trial court erred. For instance, Williams fails to explain why he could not have timely filed his petition despite the absence of certain documents he claims it took three years to obtain. In addition, Williams fails to provide any basis for the argument that his claims have sufficient merit to fall under the interests of justice exception. Instead, it is clear that Williams's claims were raised or should have been raised in his previous appeal, and Williams sets forth no legal or factual basis for the assertion that appellate counsel was ineffective. Thus, the trial court properly determined the petition to be untimely and appropriately evaluated whether to apply the interests of justice exception.

The dismissal of Williams's petition is affirmed.

Russell W. Bench,
Presiding Judge

Carolyn B. McHugh, Judge

William A. Thorne Jr., Judge