

IN THE UTAH COURT OF APPEALS

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Shannon Glenn Winward,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20090528-CA
v.)	
)	
State of Utah,)	F I L E D
)	(September 3, 2009)
)	
Respondent and Appellee.)	2009 UT App 245

Third District, Salt Lake Department, 090906912
The Honorable Paul G. Maughan

Attorneys: Grant W. Morrison, Salt Lake City, for Appellant

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Shannon Glenn Winward appeals the district court's order dismissing his petition for post-conviction relief. This matter is before the court on a motion for summary disposition. We reverse and remand.

Winward was convicted of sexual abuse of a child and four counts of sodomy on a minor. Winward appealed his conviction to this court, and we affirmed. See State v. Winward, 941 P.2d 627, 636 (Utah Ct. App. 1997). The Utah Supreme Court denied his petition for a writ of certiorari on October 21, 1997. Thus, Winward's cause of action for filing his petition for post-conviction relief accrued on October 21, 1997, which was the date of "the entry of the denial of the petition for writ of certiorari or the entry of the decision on the petition for certiorari review, if a petition for writ of certiorari is filed." Utah Code Ann. § 78B-9-107(2)(d) (2008).

On April 27, 2009, Winward filed his petition for post-conviction relief. The district court summarily dismissed the petition because it was not filed within one year after the cause of action accrued. See id. § 78B-9-107(1).

On appeal, Winward asserts that the district court did not comply with Utah Code section 78B-9-106(2). Utah Code section 78B-9-106(2) provides that "[a]ny court may raise a procedural bar or time bar on its own motion, provided that it gives the parties notice and an opportunity to be heard." Id. § 78B-9-106(2). Because the record indicates that the district court raised the time bar, Winward was entitled to notice and an opportunity to be heard as to why he should be excused from filing a timely petition for post-conviction relief.

Accordingly, the district court's order of dismissal is reversed. We remand this matter so the district court can afford Winward his notice and opportunity to be heard in accordance with Utah Code section 78B-9-106(2).

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge