

IN THE UTAH COURT OF APPEALS

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Lance Conway Wood,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20070719-CA
v.)	
)	F I L E D
Board of Pardons,)	(December 20, 2007)
)	
Respondent and Appellee.)	2007 UT App 399

Third District, Salt Lake Department, 070906971
The Honorable L.A. Dever

Attorneys: Lance Conway Wood, Boise, Idaho, Appellant Pro Se
Mark L. Shurtleff and Brent A. Burnett, Salt Lake
City, for Appellee

Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

Lance C. Wood appeals from the trial court's order granting the Utah Board of Pardons and Parole's (Board) motion to dismiss. This case is before the court on a sua sponte motion for summary disposition for insubstantial question.

In 1990, the trial court gave Wood a life sentence for murder and a ten year to life sentence for aggravated kidnaping. On parole review, the Board determined that Wood would not be eligible for parole and that he should serve his natural life sentence.

In 1995, the Board amended its policies to permit requests for redetermination reviews every ten years from inmates serving sentences of natural life in prison, instead of every five years. Wood filed a petition for extraordinary relief pursuant to Rule 65B of the Utah Rules of Civil Procedure. Wood alleged that the revised parole reconsideration schedule violated the constitutional imposition against ex post facto laws and that the Board denied parole based on false information. The Board filed a motion to dismiss. The trial court granted the Board's motion to dismiss Wood's petition.

On appeal, Wood asserts that he did not receive an evidentiary hearing to address the issues raised in his petition and that he should have been appointed an attorney. However, he has not shown that he was entitled to either a hearing or appointment of counsel.¹ Furthermore, the trial court properly dismissed his petition.

We do not need to reach Wood's argument that he did not receive an evidentiary hearing to consider the constitutionality of his revised parole reconsideration schedule. The modification of a parole redetermination schedule does not violate the ex post facto clause because the modification does not alter the punishment or sentence applicable to the offender. See California Dep't. of Corr. v. Morales, 514 U.S. 499 (1995). Wood's challenge to the Board's determination is essentially a collateral attack on his underlying convictions. Therefore, Wood's challenge should have been filed as a petition for post-conviction relief under Rule 65C of the Utah Rules of Civil Procedure and Utah Code section 78-35a-101, et seq. As such, the district court did not err in granting the Board's motion to dismiss.

Accordingly, the dismissal of Wood's petition is affirmed.

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge

James Z. Davis, Judge

¹Incarcerated inmates have no statutory or constitutional right to counsel in a civil petition for post-conviction relief. See Hutchings v. State, 2003 UT 52, ¶ 20, 84 P.3d 1150. Given that the grounds for Wood's petition are baseless, the trial court did not abuse its discretion in not appointing counsel.