

1997

Jensen v. Industrial Commission of Utah : Unknown

Utah Court of Appeals

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Brad C. Betebenner; S. Brook Millard; Richards, Brandt, Miller & Nelson; Attorney for Respondent.

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ORIGINAL

FILED

AUG 7 - 1997

CLERK SUPREME COURT

UTAH

9703

LIST OF ATTACHMENTS

1. Notice of Appeal filed in the instant case filed in the Fourth District Court
2. Letter of July 16, 1997 transferring the instant case from the Court of Appeals Case Number 970324-CA to the Supreme Court Case Number 970324
3. Ruling re: Petition for Relief under the Post-Conviction Remedies Act and Order of Dismissal, from Judge Lynn W. Davis, dated April 1, 1997.
4. Memorandum Decision of the Court of Appeals in Defendant's Direct Appeal decision filed December 7, 1997.

FILED

AUG 7 - 1997

CLERK SUPREME COURT

UTAH

Melville E. Smith (Name)
Attorney Pro Se
WEL. STATE PRISON (Address)
P.O. Box 256 WEL. (Address)
STATE PRISON PROPERT UT.

IN THE Fourth JUDICIAL DISTRICT COURT, WELCH COUNTY
STATE OF UTAH

Melville E. Smith
Petitioner/Appellant,

vs.

Defendant/Appellee.

*
* NOTICE OF APPEAL
*
*
* District Ct. Case No.: 970400263
*
* Judge: Lynn W. Davis
*

Notice is hereby given that petitioner/appellant, Melville E. Smith, Attorney Pro Se, Lynn appeals to the Utah Supreme Court the final order of the Honorable Perk, entered in this matter on 30 day of April, 1997, in the Fourth Judicial District Court, WELCH County, State of Utah.

The appeal is taken from such part of the Judgment that states that plaintiff's/appellant's action is dismissed based upon the following:

After careful review it appears that the petition is entirely filed. Petitioner fails to allege facts necessary, as a matter of law, to support his claim for relief. Among the necessary facts a petition for extraordinary relief must assert that the petition has been filed within one year after the cause of action accrued. (See U.C.A. 78-35A-107(1).) Petitioner's case is a 1993 case.

IN THE SUPREME COURT
STATE OF UTAH
332 STATE CAPITOL
SALT LAKE CITY, UTAH 84114
July 16, 1997

OFFICE OF THE CLERK

MELVIN E. SMITH
UTAH STATE PRISON
P O BOX 250
DRAPER UT 84020

Melvin Smith,
Plaintiff and Appellant,
v.
Jimmie Stewart,
Defendant and Appellee.

No. 970329
970324-CA
970400263

The above referenced case has been transferred from the Court of Appeals to the Supreme Court. All further documents should be filed with the Supreme Court. Please take note of the above-referenced Supreme Court docket number.

Ardis W. Brown
Deputy Clerk

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

<p>MELVIN SMITH vs. JIMMIE STEWART, et al.,</p> <p style="text-align:right">Petitioner, Respondent.</p>	<p>RULING RE: PETITION FOR RELIEF UNDER THE POST-CONVICTION REMEDIES ACT AND ORDER OF DISMISSAL</p> <p>CASE NO. 970400263 DATE: APRIL 1, 1997 JUDGE: LYNN W. DAVIS CLERK: SGJ</p>
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On March 31, 1997, Melvin Smith filed a Petition for Relief Under the Post-Conviction Remedies Act together with supporting documents. This Court has very carefully reviewed the file.

A jury trial was conducted on March 28, 1994. Mr. Smith was convicted of Aggravated Burglary and Possession of a Dangerous Weapon.

Mr. Smith claims several grounds supporting relief:

- ineffective assistance of counsel;
- insufficiency of evidence to support verdict; and
- failure of State to comply with 120 day disposition notice.

RULING

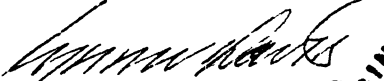
After careful review it appears that the petition is untimely filed. Petitioner fails to allege facts necessary, as a matter of law, to support his claim for relief. Among the necessary facts, a petition for extraordinary relief must assert that the petition has been filed within one year after the cause of action accrued. (See U.C.A. 78-35A-107(1).)

ORDER

The petition of Melvin Smith, based upon the above, is hereby ordered dismissed, as a matter of law, and the file is ordered closed.

Dated this 1st day of April, 1997.

BY THE COURT


LYNN W. DAVIS, JUDGE



cc: Melvin Smith