

2016

William Sherratt, Petitioner, v. St Ate of Ut Ah, Et Al, Respondents.

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WILLIAM SHERRATT, :

Petitioner, :

v. :

STATE OF UTAH, et al, :

Case No. 20150313-CA

Respondents. :

BRIEF OF RESPONDENTS

Appeal from the Final Order of the Sixth Judicial District Court in and for
Sanpete County, Honorable Marvin D. Bagley, Presiding

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Petitioner

FILED
UTAH APPELLATE COURTS

JUL 15 2016

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WILLIAM SHERRATT, :
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 Petitioner, :
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 v. :
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COUNSEL'S CERTIFICATE PURSUANT TO RULE 24(f)(1)(C)

I hereby certify that the Brief of Respondent contains 1,736 words, including headings, footnotes, and quotations, but excluding the Table of Contents, Table of Authorities, and the Addendum.

I have relied upon the word count of the word processing system, Microsoft Word 2010, used to prepare this brief. The font used is Century Schoolbook, 13 point.

Certified this 15th day of July, 2016.



Brent A. Burnett
Assistant Solicitor General
Counsel for Respondents

LIST OF ALL PARTIES

To the best of Respondent’s knowledge, the following interested parties do not appear in the caption of this Brief. Chief Justice Matthew Durrant, Justice Ronald Nehring, Justice Christina Durham, Justice Jill Parish, Justice Thomas Lee, Judge Russell Bench, Judge James Davis, Judge Carolyn McHugh, Judge Michelle Christiansen, Judge Gregory Orme, Judge William Thorne, Judge John Walton, Judge Michael Westfall, Judge Gary Stott, Judge Robert Braithwaite, Judge G. Rand Beacham, Attorney General Mark Shurtleff, Attorney General John Swallow, Assistant Attorney General Patrick Nolan, Assistant Attorney General Erin Riley, Assistant Attorney General Michael Wims, Assistant Attorney General Kris Leonard, Executive Director Colin Winchester, John Does 1-12 (Utah Judicial Conduct Commission).

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IN THE UTAH COURT OF APPEALS

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Respondents. :

BRIEF OF RESPONDENTS

STATEMENT OF JURISDICTION

This appeal involves two consolidated appeals (Nos. 20150313 and 20150319). The Utah Supreme Court had original jurisdiction over these appeals. Utah Code § 78A-3-102(3)(j). Both appeals were poured over to this Court pursuant to Utah Rules of Appellate Procedure 42(a). This Court consolidated these appeals on May 22, 2015.

STATEMENT OF ISSUES ON APPEAL

1. Does this Court have subject matter jurisdiction over Sherratt's claims based on Utah Code § 78B-6-601 where nothing in the record shows that he ever filed the necessary notices of claim?

ISSUE PRESERVED BELOW and STANDARD OF REVIEW: This issue was not raised below but this Court must, as a threshold matter determine if it has jurisdiction to hear an appeal. *America West Bank Members, L.C. v. State*, 2014 UT 49, ¶ 9, 342 P.3d 224 (“As a threshold matter, we must determine if we have jurisdiction to hear this appeal. If we lack jurisdiction, we must dismiss the appeal. Only if we first determine that we have appropriate jurisdiction will we address the merits of a case.”) (footnotes omitted).

2. Did the trial court err in dismissing this action’s claims under Utah’s Post-Conviction Remedies Act because they were barred by that Act?

ISSUE PRESERVED BELOW and STANDARD OF REVIEW:

This issue was addressed by the trial court in its First Amended Order of Dismissal. R. 1246-47, 1250-51. The legal reasoning of a court considering an extraordinary writ is reviewed for correctness. *Rice v. Div. of Securities*, 2004 UT App 215, ¶ 4, 95 P.3d 1169.

3. Was the trial court without power to review prior decisions of this Court and the Utah Supreme Court?

ISSUE PRESERVED BELOW and STANDARD OF REVIEW: This issue was not raised below. This Court can affirm on any alternative ground that “is sustainable on any legal ground or theory apparent on the record.” *Olsen v. Chase*,

2011 UT App 181, ¶ 19, 270 P.3d 538 (internal quote omitted).

4. Can Sherratt bring actions under two statutes, one dealing with bonds when suing law enforcement officers, and the other that only creates an action for the government against an employee?

ISSUE PRESERVED BELOW and STANDARD OF REVIEW: This issue was not raised below. This Court can affirm on any alternative ground that “is sustainable on any legal ground or theory apparent on the record.” *Olsen v. Chase*, 2011 UT App 181, ¶ 19, 270 P.3d 538 (internal quote omitted).

DETERMINATIVE STATUTES

Any such statutes are quoted fully in the brief.

STATEMENT OF THE CASE

Sherratt brought this action against eleven past and present Utah appellate court justices and judges, five fifth district court judges, six past and present officers of the Utah Attorney General’s Office, and thirteen employees or officers of the Utah courts. R. 1.

Sherratt raised claims under Utah Code § 78-35-1,¹ the Utah Post-Conviction Remedies Act, and Utah Rules of Civil Procedure 65B. R. 1. The trial court dismissed this action in its Amended Order of Dismissal. R. 1245-52. Sherratt filed two separate

¹ This statute was renumbered as Utah Code § 78B-6-601 in 2008.

notices of appeal. R. 1253, 1259. This Court consolidated the two appeals in this appeal on May 22, 2015.

STATEMENT OF RELEVANT FACTS

The trial judge held that Sherratt's petition failed "to comply with Rule 8(a) of the Utah Rules of Civil Procedure which requires pleadings to be 'a short and plain' statement of the party's claim showing the party is entitled to relief and a demand for specific relief. R. 1245. The trial judge also held that the petition was "rambling, confusing and difficult to comprehend." *Id.*

The petition seeks to relitigate all of Sherratt's prior trial and appellate proceedings concerning his criminal conviction. Sherratt alleges fraud and misconduct on the part of the judges that handled these proceedings and others that were involved.

SUMMARY OF ARGUMENT

The trial judge lacked jurisdiction over Sherratt's claims for penalties against the judicial respondents pursuant to Utah Code § 78B-6-601. This Court and the Supreme Court have held that a petitioner needs to first file a notice of claim under the Utah Governmental Immunity Act before he can file such claims.

The trial judge correctly held that he could not hear Sherratt's Post-Conviction Remedies Act claims because they should have been filed in the county where Sherratt was convicted. Further, this action was untimely under the Act.

Beside seeking penalties against the respondents, Sherratt asked the trial judge to review and reverse various appellate court decisions. Trial judges do not have the power to review and alter prior decisions of this Court or the Utah Supreme Court.

Sherratt claims to have brought this action, in part, pursuant to Utah Code § 78-11-10. But that statute was repealed on February 7, 2008. 2008 Laws of Utah ch. 3, § 1474. The new statute, Utah Code § 78B-3-104, does not create a cause of action but only requires someone filing an action against a law enforcement officer to post a bond.

He also claims to bring this action pursuant to Utah Code § 78-12-24. But that statute, now found at Utah Code § 78B-2-310, only creates an action on behalf of the government against former government officers.

ARGUMENT

I. THE TRIAL COURT AND THIS COURT ARE WITHOUT SUBJECT MATTER JURISDICTION TO HEAR SHERRATT'S CLAIMS UNDER UTAH CODE § 78B-6-601 BECAUSE SHERRATT HAS FAILED TO SHOW THAT HE HAS FILED THE REQUISITE NOTICES OF CLAIM

Sherratt seeks penalties against the judicial respondents pursuant to Utah Code § 78B-6-601. "Any judge, whether acting individually or as a member of a court, who wrongfully and willfully refuses to allow a writ of habeas corpus whenever proper application has been made shall forfeit and pay a sum not exceeding \$5,000 to the aggrieved party." Because this statute creates a statutory cause of action for damages against government employees, the

requirements of the governmental immunity statutes must be followed. In *Straley v. Halliday*, 2000 UT App 38, ¶ 14, 997 P.2d 338, this Court held that “[a] proper notice of claim must be filed to invoke the trial court's jurisdiction” for an action under what is now Section 601.

The Utah Supreme Court has followed this Court's decision in *Straley*.

In the recent case of *Straley*, the Utah Court of Appeals held that actions under section 78-35-1 are barred unless the plaintiff demonstrates compliance with the Immunity Act's notice of claim provisions. We agree with the reasoning of that case and therefore hold that the district court lacked jurisdiction to entertain Thomas's claim.

Thomas v. Lewis, 2001 UT 49, ¶ 14. 26 P.3d 217 (citations omitted).

Sherratt has not demonstrated his compliance with the notice of claim provisions. He has not made the necessary factual statement that he filed the notices of claim and filed this action timely after their denial.

II. SHERRATT'S POST-CONVICTION CLAIMS WERE CORRECTLY DISMISSED FOR FAILURE TO COMPLY WITH THAT ACT

An action under the Post-Conviction Remedies Act “shall be commenced by filing a petition with the clerk of the district court in the county in which the judgment of conviction was entered.” Utah R. Civ. P. 65C(c). It is undisputed that Sherratt was not convicted in the Sixth District, Sanpete County, where he filed this action. “[T]he Sixth District Court does not have jurisdiction to hear Petitioner's Petition because this court does not sit in the county in which the conviction was entered.” R. 1247.

This action has also been brought after the expiration of the applicable statute of limitations. The Post-Conviction Remedies Act has a one year statute of limitations from the date a cause accrues. Utah Code § 78B-9-107(1). “Petitioner’s brief also acknowledges the court rulings averse to him issued more than one year prior to the filing of his Petition in this case; as required by Utah Code Ann. §78B-9-107. Accordingly, Petitioner’s Petition is both procedurally and time barred.” R. 1251.

III. THE TRIAL JUDGE DID NOT HAVE POWER TO REVIEW AND REVERSE PRIOR APPELLATE COURT DECISIONS

Sherratt asked the trial judge to review previous Utah appellate court decisions and overturn them. This is a power that Utah trial judges do not have. “The district court properly pointed out that Mr. Allen’s objection to the result reached by this court was not a claim for which relief could be granted because the district court did not have the power to review decisions of the supreme court.” *Allen v. Friel*, 2008 UT 56, ¶ 28, 194 P.3d 903. It is not for a lower court to second guess the decisions of the appellate courts, but to follow them. Petitions under 65B and 65C cannot seek the reversal, by the trial judge, of numerous appellate court decisions.

IV. SHERRATT CAN NOT BRING THIS ACTION USING A STATUTE THAT CONCERN BONDS WHEN SUING LAW ENFORCEMENT OFFICERS AND A STATUTE THAT ONLY CREATES A CAUSE OF ACTION FOR THE GOVERNMENT

Sherratt’s petition is captioned as a “Civil Suit Against Officers, Pursuant to 78-11-10.” R. 1. But this statute was repealed on February 7, 2008. 2008 Laws of Utah

ch. 3, § 1474. Even if the statute had not been repealed, it did not create a cause of action against state judges, employees of the Utah courts, or state attorneys. It only required a bond be posted before filing an action against law enforcement officers. The new statute, Utah Code § 78B-3-104, also does not create a cause of action. It also just requires a bond be filed before an action against law enforcement officers can be filed.

Nor can Sherratt bring an action pursuant to Utah Code § 78-12-24. That statute, now found at Utah Code § 78B-2-310, only creates an action on behalf of the government against former government officers. It does not create a cause of action that Sherratt can bring against the respondents

CONCLUSION

For the reasons set forth above, the Respondents ask this Court to affirm the trial judge's order dismissing Sherratt's petition.

Respectfully submitted this 15th day of July, 2016.



BRENT A. BURNETT
Assistant Solicitor General
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that I mailed two true and exact copies of the foregoing Brief of Respondents, postage prepaid, to the following on this 15th day of July, 2016:

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Petitioner



ADDENDUM

“A”

SIXTH DISTRICT COURT

2015 MAR 11 AM 8:40

CLERK ML

SIXTH DISTRICT COURT, STATE OF UTAH
SANPETE COUNTY
160 North Main, Room 303, P.O. Box 219
Telephone: (435) 835-2121; Facsimile: (435) 835-2134

WILLIAM SHERRATT,

Petitioner,
vs.

STATE OF UTAH,

Respondent.

AMENDED ORDER OF DISMISSAL

Case No. 130600060

Judge Marvin D. Bagley

Petitioner William Sherratt is an inmate at the Central Utah Correctional Facility in Gunnison, Sanpete County, Utah. On September 24, 2013 Petitioner filed his Petition in this court against the justices of the Utah Supreme Court, the judges of the Utah Court of Appeals, some district and justice court judges in the Fifth District, the Utah Attorney General, various assistant attorneys general, and the executive director of the Utah Judicial Conduct Commission.

The Petition alleges fraud, conspiracy and other wrongdoing by the various defendants in prior cases that petitioner was a party. Petitioner's Petition is 73 pages long with 36 exhibits totaling hundreds of pages. The Petition fails to comply with Rule 8(a) of the Utah Rules of Civil Procedure which requires pleadings to be "a short and plain: (1) statement of the claim showing that the party is entitled to relief; and (2) demand for judgment for specified relief." The Petition is also rambling, confusing and difficult to comprehend. The Petition appears to assert various claims which are governed by different statutes and rules.

001245

This Court, on its own motion, raised the issue that Petitioner's petition may be barred by Utah Code Ann. §78B-9-106(1) because the Petition asserts claims Petitioner previously raised in various other petitions for post-conviction relief. On June 27, 2014 this Court served Petitioner with a Notice and Opportunity to be Heard giving Petitioner thirty days to brief whether or not the Petition is barred. Petitioner submitted a response brief and did not request a hearing. The matter is now ready for a decision. The Court will address the different claims under the various provisions of applicable law.

I. UTAH POST-CONVICTION REMEDIES ACT

Utah's Post-Conviction Remedies Act, Utah Code Ann. §78B-9-101 et. seq. (the Act), allows convicted persons to seek post-conviction relief to vacate a sentence or conviction upon grounds "the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution." Utah Code Ann. §78B-9-104(1)(a). A convicted person, may not, however, obtain post-conviction relief under the Act on any grounds that:

- (a) may still be raised on direct appeal or by a post-trial motion;
- (b) was raised or addressed at trial or on appeal;
- (c) could have been but was not raised at trial or on appeal;
- (d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for post-conviction relief; or
- (e) is barred by the limitation period established in Section 78B-9-107.

Utah Code Ann. §78B-9-106(1). Proceedings under the Act are governed by Rule 65C of the Utah Rules of Civil Procedure. Under Rule 65C(c) a post-conviction relief petition must be brought "in the county in which the judgment of conviction was entered." The Act also requires that a petition be filed "within one year after the cause of action has accrued." Utah Code Ann. §78B-9-107. To the extent Petitioner requests reversal of the conviction or sentence in his

criminal case based on fraud or other wrongdoing under the United States or Utah Constitutions, his Petition is one for relief under the Act and is governed by rule 65C, Utah Rules of Civil Procedure.

The Petition asserts that several witnesses lied during Petitioner's trial; and that another person confessed to the crimes for which he was convicted. Petitioner asserts that both the prosecuting and defense attorneys had knowledge of the witnesses' false statements; and purposefully withheld exculpatory evidence. Petitioner claims this fraud tainted his conviction and sentence. He also claims the named judges were co-conspirators to the fraud because they refused to overturn Petitioner's conviction.

By his own admission, Petitioner previously raised the claims he now asserts, in several other post-conviction relief petitions; and in prior appeals seeking to overturn his conviction. As such, Petitioner is barred from again raising those claims in this action. Utah Code Ann. §78B-9-106(1). In addition, the Sixth District Court does not have jurisdiction to hear Petitioner's Petition because this court does not sit in the county in which the conviction was entered. See Utah R. Civ. P. 65C(c). The convictions were entered in the Fifth District Court. Accordingly, Petitioner's claims for post-conviction relief under the Utah-Post Conviction Remedies Act and Rule 65C should be dismissed.

II. CLAIMS UNDER UTAH CODE §78B-6-601

The Utah Code authorizes suits against any judge "who wrongfully refuses to allow a writ of habeas corpus whenever proper application has been made..." Utah Code Ann. §78B-6-601 (formerly UT ST §78-35-1). However, when a petition is frivolous on its face pursuant to

Utah Rule of Civil Procedure 65C(h), then no proper application has been made. *See Straley v. Halliday*, 2000 UT App 38, ¶13, fn. 7, 997 P.2d 338. "A claim is frivolous on its face when[,] [in relevant part,] the claim has no arguable basis in fact." Utah R. Civ. P. 65C(h)(2)(B).

Petitioner asserts the various named judges wrongfully denied his previous petitions for writs of habeas corpus. Petitioner alleges the existence of a lie that each judge knew, or should have known, was a lie. Petitioner asserts the Utah Court of Appeals, in appellate case number 20090413, fabricated the grounds it affirmed the dismissal of Petitioner's innocence petition. The Court reasoned that Petitioner's petition was improperly filed in his criminal case, number 991500552. The petition did in fact bear that case number. Petitioner maintains he submitted the petition with a blank space for the case number, as instructed by the lower court in the case; and that some court employee improperly assigned the petition to his criminal case.

Petitioner asserts in his Petition, just as he previously argued to the appellate court, that the lower court improperly assigned the wrong case number. Such alleged facts do not support a claim under §78B-6-601. There is no stated rational or arguable basis in fact to assert that the Court of Appeals fabricated the grounds that the petition was improperly filed in his criminal case. That petition did bear the criminal case number. Petitioner's claims under §78B-6-601 should be dismissed as frivolous.

III. RULE 65B EXTRAORDINARY WRIT

Petitioner's Petition asserts the judge defendants all refused to exercise proper judicial authority and knowingly acted on a lie fabricated by the Utah Court of Appeals as explained in Section II *supra*. Specifically, Petitioner claims the Utah Supreme Court, the Utah Court of

Appeals, and judges of the Fifth District all had access to Petitioner's original innocence petition in case 991500552. He claims they all could see from the face of the document the petition was properly filed. He alleges such defendants nevertheless wrongly refused to grant him relief. Petitioner additionally claims the Judicial Conduct Commission refused to impose sanctions, or address, the wrongful action of those judges; and that the Utah Attorney General defendants perpetuated the Court of Appeal' alleged lie to the Utah Supreme Court. Petitioner seeks an extraordinary writ to remedy his alleged wrongs.

Rule 65B(a) and (d) Utah Rules of Civil Procedure allows for issuance of an extraordinary writ when under the law and Rules of Civil Procedure "no other plain, speedy and adequate remedy is available..." Such extraordinary relief may be sought when the claim involves "wrongful use of judicial authority [or] failure to exercise such authority..."

Under Rule 65B(d)(2):

Appropriate relief may be granted: (A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; (B) where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled....

If no procedure is outlined in Rule 65B, proceedings on petitions for extraordinary relief are governed by the general procedures set forth under the Utah Rules of Civil Procedure; except for instances governed by Rule 65C. Utah R. Civ. P. 65B(a). Therefore, summary dismissal based on the frivolousness of the petition is applicable. Where the challenged proceedings are judicial in

nature, the courts' review does not extend further than to determine whether the Rule 65B(d)(4) respondent has regularly pursued his or her authority.

For the same reasons stated in section II, *supra*, pertaining to frivolousness, Petitioner's claims for extraordinary relief against the judge defendants, the Judicial Conduct Commission, and the Utah Attorney General should also be dismissed as frivolous. There is no rational or arguable basis in fact to assert that the Utah Court of Appeals fabricated a lie; *i.e.* that Petitioner's innocence petition was improperly filed in his criminal case instead of in a separate civil action. The mere assertion of the allegation by Petitioner does not make such assertion a fact. The court found that the petition, as a matter of fact, did bear the criminal case number. Furthermore, there is no factual basis to assert that any of the respondents failed to act in their regular pursuit of authority in reaching the decisions they made. That is all the law requires.

IV. PROCEDURAL BAR UNDER 78B-9-106

Under Utah Code Ann. §78B-9-106 of the Utah Post-Conviction Remedies Act a court may raise on its own motion a procedural bar or time bar to petitions filed under the Act; provided the court gives the petitioner notice and opportunity to be heard. This Court specifically gave Petitioner notice and opportunity to be heard by serving defendant with the document titled Notice and Opportunity to be Heard on June 27, 2014. Petitioner filed his responsive brief on July 29, 2014. This Court read and considered Petitioner's brief.

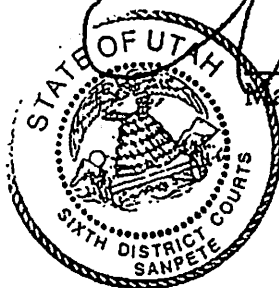
The contents of Petitioner's responsive brief essentially acknowledge the relief Petitioner seeks in his Petition is both procedurally and time barred. Petitioner acknowledged he filed petitions for *habeas corpus* in 2002, 2003, 2005, 2008, and 2011. Petitioner's brief failed to

establish why the grounds asserted in his instant Petition could not have been asserted in any of those prior filings. Petitioner's brief also acknowledges the court rulings adverse to him were issued more than one year prior to the filing of his Petition in this case; as required by Utah Code Ann. §78B-9-107. Accordingly, Petitioner's Petition is both procedurally and time barred. The petition should also be dismissed under Rule 65B(b)(5) Utah Rules of Civil Procedure because petitioner's "restraint has already been adjudicated in a prior proceeding" and because his claim is "frivolous on its face..."

CONCLUSION AND ORDER

For the reasons discussed herein, Petitioner's complaint is DISMISSED with prejudice. This order is final. No additional ruling, hearing, order, or action is necessary.

DATED this 10th day of March 2015.



Marvin D. Bagley
Marvin D. Bagley, Sixth District Court Judge

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Certificate of Notification

On March 11, 2015, a copy of the above was sent to:

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