

1992

Melvin Dean Frame v. Gary Deland, et al. : Brief of Appellee

Utah Supreme Court

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Melvin Dean Frame; Pro Se.

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920158CA

IN THE SUPREME COURT OF THE STATE OF UTAH

MELVIN DEAN FRAME,

:

Petitioner-Appellant,

:

Case No. 910481

v.

:

GARY DELAND, et al.,

:

Category No. 3

Respondents-Appellees.

:

92-0158-CA

BRIEF OF APPELLEES

- - - - -

APPEAL FROM A DISMISSAL OF A PETITION FOR
POSTCONVICTION RELIEF, IN THE FIFTH JUDICIAL
DISTRICT COURT, IN AND FOR WASHINGTON COUNTY,
STATE OF UTAH, THE HONORABLE J. PHILIP EVES,
PRESIDING.

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FILED

FEB 7 1992

CLERK SUPREME COURT
UTAH

IN THE SUPREME COURT OF THE STATE OF UTAH

MELVIN DEAN FRAME,	:	
Petitioner-Appellant,	:	Case No. 910481
v.	:	
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IN THE SUPREME COURT OF THE STATE OF UTAH

MELVIN DEAN FRAME,	:	
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BRIEF OF APPELLEES

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a dismissal of a petition for postconviction relief filed under rule 65B(i), Utah Rules of Civil Procedure.

This Court has jurisdiction to hear the appeal under Utah Code Ann. § 78-2-2(3)(i) (Supp. 1991).

STATEMENT OF ISSUES PRESENTED ON APPEAL

AND STANDARDS OF APPELLATE REVIEW

The sole issue presented on appeal is whether the district court correctly dismissed petitioner's successive habeas petition on the ground that an identical petition had previously been filed and dismissed.

"In considering an appeal from a dismissal of a petition for a writ of habeas corpus, no deference is accorded the lower court's conclusions of law that underlie the dismissal of the petition. [This Court] review[s] those for correctness." Fernandez v. Cook, 783 P.2d 547, 549 (Utah 1989).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Rule 65B(i), Utah Rules of Civil Procedure¹:

(2)

The complaint shall further state that the legality or constitutionality of his commitment or confinement has not already been adjudged in a prior habeas corpus or other similar proceeding; and if the complainant shall have instituted prior similar proceedings in any court, state or federal, within the state of Utah, he shall so state in his complaint, . . . and shall set forth the reasons for the denial of relief in such other court. In such case, if it is apparent to the court in which the proceeding under this rule is instituted that the legality of or constitutionality of his confinement has already been adjudged in such prior proceedings, the court shall forthwith dismiss such complaint, . . . , and no further proceedings shall be had on such complaint.

STATEMENT OF THE CASE

On June 26, 1991, petitioner, Melvin Dean Frame, filed a petition for writ of habeas corpus under rule 65B(i), Utah Rules of Civil Procedure, in which he alleged that he was denied effective assistance of counsel at trial (R. 1-6). The State moved to dismiss the petition on the ground that an identical petition had previously been filed and dismissed (R. 12). The court agreed, and dismissed the petition because "[p]etitioner did in fact file an identical petition for postconviction relief in February 1990 and that no good cause exists to allow the claim to again be raised . . ." (R. 20-21) (a copy of the court's order is contained in the addendum to this brief).

¹ Rule 65B was amended effective September 1991. References to Rule 65B in this brief are to the preamended version, which was in effect at the time the district court dismissed petitioner's petition.

STATEMENT OF FACTS

A statement of facts beyond that set forth above in the Statement of the Case is not necessary to the resolution of the issue presented on appeal.

SUMMARY OF ARGUMENT

Because petitioner has failed to demonstrate that there were "unusual circumstances" that required the district court to consider his successive habeas petition, which raised issues identical to those raised in a previously dismissed habeas petition, this Court should affirm the district court's dismissal.

ARGUMENT

BECAUSE PETITIONER FAILS TO DEMONSTRATE THAT THERE WERE "UNUSUAL CIRCUMSTANCES" THAT REQUIRED THE DISTRICT COURT TO CONSIDER HIS SUCCESSIVE PETITION, THIS COURT SHOULD AFFIRM THE DISTRICT COURT'S DISMISSAL.

The district court dismissed petitioner's habeas petition on the ground that an identical petition had previously been filed by petitioner and dismissed, and that no good cause existed to allow his claims to be raised again. Petitioner argues that there was "good cause" to consider the successive petition because "[petitioner]'s original attorney, James L. Shumate, who was working with him on the original writ which was filed by the [p]etitioner, became a Circuit Court Judge in Washington County, and [petitioner] eventually filed the [p]etition by himself without a thorough review of that [p]etition by counsel." Br. of Appellant at 3.

The district court's dismissal of the petition is reviewed for correctness. Fernandez v. Cook, 783 P.2d 547, 549 (Utah 1989) ("In considering an appeal from a dismissal of a petition for a writ of habeas corpus, no deference is accorded the lower court's conclusions of law that underlie the dismissal of the petition. We review those for correctness."). It is clear that under rule 65B(i)(2), Utah Rules of Civil Procedure, "[a] ground for relief from a conviction or sentence that has once been fully and fairly adjudicated . . . in a prior habeas proceeding should not be readjudicated unless it can be shown there are 'unusual circumstances.'" Hurst v. Cook, 777 P.2d 1029, 1036 (Utah 1989). See also Candelario v. Cook, 789 P.2d 710, 712 (Utah 1990) ("Rule 65B(i)(2) is designed to prevent successive petitions for a writ based on identical grounds, a potential abuse of the judicial system.")². Petitioner has not shown that any "unusual circumstances" similar to those identified in Hurst, 777 P.2d at 1036, were present in his case. Simply because his counsel on the original habeas petition became a circuit court judge prior to it being filed and thus was apparently unable to review it, does not amount to an unusual circumstance which would compel consideration of the identical,

² Although the district court relied on rule 65B(1)(4) in dismissing petitioner's petition, rule 65B(i)(2) more clearly applies. This Court should uphold the dismissal under rule 65B(i)(2), as construed in Hurst and Candelario. See Candelario, 789 P.2d at 712 (relying on alternative basis -- i.e., rule 65B(i)(2) -- for affirming dismissal of habeas petition); State v. Bryan, 709 P.2d 257, 260 (Utah 1985) (Court may affirm a decision on any proper grounds "even though the trial court assigned another reason for its ruling").

successive petition dismissed in the instant case. Since petitioner has advanced no other basis for finding an unusual circumstance or, in petitioner's and the district court's words, "good cause," this Court should affirm the dismissal of the petition. As noted in Hurst, 777 P.2d at 1036, "[o]rdinarily, a ground for setting aside a conviction or sentence may not be relitigated." The district court correctly applied that principle here.

CONCLUSION

Based on the foregoing argument, this Court should affirm the district court's dismissal of petitioner's habeas petition.

RESPECTFULLY submitted this 7th day of February, 1992.

R. PAUL VAN DAM
Attorney General

David B. Thompson
DAVID B. THOMPSON
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Appellees was mailed, postage prepaid, to Melvin Dean Frame, Pro Se, 2136 North Main, Cedar City, Utah 84720, this 7th day of February, 1992.

David B. Thompson

ADDENDUM

5th JUDICIAL DIST. COURT • IRON COUNTY
F F E E D D

AUG 15 1991

CLERK

DEPUTY

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IN THE FIFTH JUDICIAL DISTRICT COURT, IRON COUNTY
STATE OF UTAH

MELVIN DEAN FRAME,	:	
Petitioner,	:	ORDER
v.	:	
GARY DeLAND, et al.,	:	Case No. 910900047 HC
Respondent.	:	Judge J. Phillip Eves

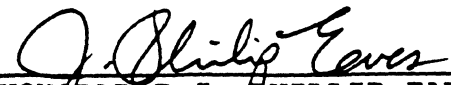
The above captioned matter came on for hearing July 23, 1991, at 9:00 a.m., before the Honorable J. Phillip Eaves, Fifth District Court Judge. Petitioner was present and represented by James M. Park. Respondent was represented by Kirk M. Torgensen, Assistant Attorney General. After hearing argument from both parties on Respondent's motion to dismiss, the court determined that Petitioner did in fact file an identical petition for post-conviction relief in February 1990 and that no good cause exists to

allow the claim to again be raised and it is hereby:

ORDERED, ADJUDGED and DECREED as follows:

1. Respondent's motion to dismiss is granted.
2. The petition for writ of habeas corpus is dismissed.

DATED this 15th day of August 1991.


HONORABLE J. PHILLIP EAVES
Fifth District Judge

MAILING CERTIFICATE

I hereby certify that on the 8 day of July, 1991, I caused to be mailed, postage prepaid, a copy of the foregoing to James M. Park, THE PARK FIRM, PC, 110 North Main, Suite H, P.O.Box 765, Cedar City, Utah 84720.

