

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20081010-CA
v.	)	
	)	F I L E D
Anthony Ray Jones,	)	(December 2, 2010)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2010 UT App 340</span>

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Fourth District, Provo Department, 071403335  
The Honorable James R. Taylor

Attorneys: Aaron P. Dodd, Provo, for Appellant  
Mark L. Shurtleff and Marian Decker, Salt Lake City,  
for Appellee

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Before Judges Davis, Orme, and Roth.

PER CURIAM:

Anthony Ray Jones seeks to challenge his guilty plea. We dismiss the appeal for lack of jurisdiction.

Utah Code section 77-13-6 requires that a defendant file a motion to withdraw his or her guilty plea before the sentence is announced. See Utah Code Ann. § 77-13-6(2)(b)(2008). "[T]o challenge a guilty plea, a defendant must move to withdraw the plea prior to the trial court's announcement of sentence." State v. Tenorio, 2007 UT App 92, ¶ 6, 156 P.3d 854. "Sentence may not be announced unless the motion is denied." Utah Code Ann. § 77-13-6(2)(b). If a defendant fails to timely file a motion to withdraw his plea, this court lacks jurisdiction to consider any claim on appeal except a challenge to the sentence itself. See State v. Rhinehart, 2007 UT 61, ¶ 15, 167 P.3d 1046. This jurisdictional bar includes ineffective assistance of counsel claims as they pertain to the plea. See State v. Briggs, 2006 UT App 448, ¶ 6, 147 P.3d 969. Claims of ineffective assistance of counsel or challenges to a guilty plea may be addressed by the filing of a petition for post-conviction relief if a motion to withdraw the guilty plea was not filed prior to sentencing. See id.

The record indicates that Jones failed to file a motion to withdraw his plea prior to sentencing. Because Jones failed to file a motion to withdraw his plea prior to sentencing, this court lacks jurisdiction to consider any issue on appeal except a challenge to Jones's sentence. See Rhinehart, 2007 UT 61, ¶ 15. Jones does not challenge his sentence on appeal. Thus, this jurisdictional bar precludes this court's review of Jones's claims that his trial counsel was ineffective, his assertion that the district court failed to adequately ensure that his pleas were knowingly and voluntarily entered, and his challenge to the constitutionality of Utah Code section 77-13-6. See id. ¶¶ 11-14.<sup>1</sup> When this court lacks jurisdiction, we retain only the authority to dismiss the appeal. See Bradbury v. Valencia, 2000 UT 50, ¶ 8, 5 P.3d 649.

Accordingly, the appeal is dismissed.

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James Z. Davis,  
Presiding Judge

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Gregory K. Orme, Judge

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Stephen L. Roth, Judge

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<sup>1</sup>Even assuming that this court had jurisdiction to consider Jones's challenges to section 77-13-6 on the grounds that the statute deprives him of the right to counsel, and the right to an appeal, the Utah Supreme Court has previously addressed these claims. The supreme court determined that the absence of a right to counsel to seek PCRA relief fails to jeopardize the constitutionality of section 77-13-6. See State v. Merrill, 2005 UT 34, ¶ 47, 114 P.3d 585. Furthermore, section 77-13-6 does not unconstitutionally deprive a defendant of the right to appeal. See Rhinehart, 2007 UT 61, ¶¶ 11-14; see also Merrill, 2005 UT 34, ¶¶ 41-48 (explaining that Utah Code section 77-13-6 creates a constitutionally permissible jurisdictional bar).