

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080674-CA
v.)	
)	F I L E D
Russell James Will Muir,)	(September 25, 2008)
)	
Defendant and Appellant.)	2008 UT App 346

Third District, Salt Lake Department, 081900284
The Honorable Anthony B. Quinn

Attorneys: Debra M. Nelson, Salt Lake City, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Greenwood, Thorne, and Orme.

PER CURIAM:

Defendant Russell James Will Muir appeals his conviction of possession of a controlled substance, a third degree felony. This case is before the court on its sua sponte motion to dismiss for lack of jurisdiction.

Muir entered a guilty plea to possession of a controlled substance on June 17, 2008, and was immediately sentenced to serve 180 days in jail with credit for time served. Muir filed this appeal in which he claims that his guilty plea was not knowingly and voluntarily entered. Muir concedes that he did not move to withdraw his guilty plea before sentencing, as required by Utah Code section 77-13-6(2)(b) . See Utah Code Ann. § 77-13-6(2)(b) (Supp. 2008) ("A request to withdraw a plea of guilty . . . shall be made by motion before sentence is announced."). However, Muir urges us to consider the merits of his claim on appeal notwithstanding his failure to file a timely motion to withdraw his guilty plea.

"Section 77-13-6(2)(b) imposes a jurisdictional bar on late-filed motions to withdraw guilty pleas, and failure to comply with its requirements extinguishes a defendant's right to challenge the validity of the guilty plea on appeal." Grimmett

v. State, 2007 UT 11, ¶ 8, 152 P.3d 306 (internal quotations marks and citations omitted). Because Muir did not file a timely motion to withdraw his guilty plea, we have no jurisdiction to consider his attack on the validity of the plea on direct appeal. See id. ¶ 27. Muir's "only remaining option is to raise his claims under the Post-Conviction Remedies Act and rule 65C of the Utah Rules of Civil Procedure." State v. Briggs, 2006 UT App 448, ¶ 6, 147 P.3d 969; see also Utah Code Ann. § 77-13-6(2)(c) (stating that any challenge to a guilty plea not made within the time specified "shall be pursued under [the] Post-Conviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure").

Accordingly, we dismiss the appeal for lack of jurisdiction.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge