

Cite as 2010 Ark. App. 609

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR10-92

JUAN VEGA, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 22, 2010APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[No. CR 2008-797-1]HONORABLE ROBIN FROMAN
GREEN, JUDGE

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Juan Vega, Jr., pled guilty to the charges of possession of methamphetamine (with intent to deliver) and possession of drug paraphernalia (in furtherance of a felony). On October 8, 2009, he was sentenced (as a habitual offender) to thirty years imprisonment in the Arkansas Department of Correction (with an additional ten years' suspended imposition of sentence). He was also ordered to pay various fines, including a \$1000 payment to the "Prosecuting Attorney's Drug Fund." On appeal, Vega contends that his convictions should be reversed and remanded because his plea had no adequate factual basis; that the trial court acted without jurisdiction; and that the trial court was not authorized to order the drug-fund payment. We affirm.

The procedural facts of this case are important to an understanding of our ultimate resolution of the appeal. Two days after Vega's judgment and commitment order was entered

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on October 28, 2009, Vega filed a notice of appeal. On November 23, 2009, Vega filed a pro se motion for Rule 37 relief. His motion was denied on December 7, 2009. However, Vega failed to file an amended notice of appeal to include the order dismissing the Rule 37 petition. He lodged his transcript with our court on January 27, 2010. After filing the transcript, Vega tendered merit-based briefs to our court.

In his first point, Vega contends that the circuit court did not have a factual basis to support his guilty plea. Specifically, he argues that the evidence proved only simple possession, not possession with the intent to deliver. With only two narrow exceptions, a conviction based on a guilty plea cannot be appealed unless it was a conditional plea, entered in accordance with Ark. R. Crim. P. 24.3. Because Vega's was neither a conditional plea nor one of the exceptional cases, we cannot consider his claim on appeal.

Vega also claims that the trial court lacked jurisdiction to act on his Rule 37 petition because a notice of appeal from his judgment and commitment order had already been filed with our court. However, he failed to amend his prior notice of appeal to include issues relating to the Rule 37 motion, which bars the issue from our review. Ark. R. App. P.—Crim. 2(a); *see also Wright v. State*, 359 Ark. 421–24, 198 S.W.3d 537, 539–41 (2004) (concluding that because Wright failed to amend his notice of appeal to include the order denying his motion for new trial—which was based on allegation of ineffective assistance of counsel—the issue could not be reached on appeal).

Finally, Vega contends that he was assessed an illegal fine and that implicates a question of subject-matter jurisdiction that can be raised for the first time on appeal. *E.g., Cross v. State*,

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2009 Ark. 597, at 4. However, because the circuit court did have jurisdiction to order a payment to the prosecutor's drug control fund pursuant to Ark. Code Ann. § 5-64-505(i)(2) (Supp. 2009), the imposition of the fine was not illegal, and Vega was required to first make his challenge below. *Young v. State*, 287 Ark. 361, 363, 699 S.W.2d 398, 399 (1985) (holding that a sentence imposed in accordance with Arkansas law does not involve a defendant's substantial rights and must be challenged at the trial-court level).

Affirmed.

PITTMAN and HART, JJ., agree.