

ARKANSAS COURT OF APPEALSDIVISION II
No. CACR11-997

KEVIN WEBB

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 25, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION,
[CR-2010-2601]HONORABLE HERBERT WRIGHT,
JUDGE

APPEAL DISMISSED

DAVID M. GLOVER, Judge

On May 25, 2011, Kevin Webb entered pleas of nolo contendere to two felony counts of Class C theft by receiving and one misdemeanor count of theft by receiving. On June 15, 2011, the trial court sentenced Webb to ten years' incarceration on each felony count and one year imprisonment on the misdemeanor count, with the sentences to run concurrently. Webb now brings this appeal, arguing that the trial court erred in accepting his nolo contendere pleas because there was a lack of compliance with Rules 24.4 and 24.6 of the Arkansas Rules of Criminal Procedure. The State has filed a motion to dismiss for lack of jurisdiction, arguing that Webb has no right to appeal from his nolo contendere pleas. We agree with the State and dismiss the appeal.

In *Kelley v. State*, 2012 Ark. App. 36, at 2–3, this court held:

Cite as 2012 Ark. App. 291

Arkansas Rule of Appellate Procedure—Criminal 1(a) provides that, except as provided by Ark. R. Crim. P. 24.3(b), there shall be no appeal from a plea of guilty. Our supreme court has recognized two other exceptions to this general rule: (1) when there is a challenge to testimony or evidence presented before a jury in a sentencing hearing separate from the plea itself; and (2) when the appeal is the appeal of a posttrial motion challenging the validity and the legality of the sentence itself. *Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004). In *Johnson v. State*, 2010 Ark. 63, the supreme court held that there is an exception to the general rule when the appeal alleges evidentiary errors that arose after the plea and during the sentencing phase, regardless of whether a jury was empaneled for that phase of the trial.

None of these exceptions are present in the case at bar. Webb did not enter a conditional plea pursuant to Rule 24.3(b); he was not sentenced by a jury, but rather by the trial court; this appeal is not one from a posttrial motion challenging the validity and legality of the sentence; and he does not allege that evidentiary errors arose after the plea and during the sentencing phase. The State's motion to dismiss the appeal is granted.

Appeal dismissed.

HART and GRUBER, JJ., agree.