

SUPREME COURT OF ARKANSAS

No. CR11-1032

SYLVIA ANN SPIRES

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered January 17, 2013

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. CR-11-103]

HON. BARBARA ELMORE, JUDGE

DISMISSED.**KAREN R. BAKER, Associate Justice**

This appeal involves a question of restitution ordered pursuant to a guilty plea. On July 14, 2011, Sylvia Ann Spires pled guilty to two counts of theft of property valued at over \$2,500 for the theft of lottery tickets and one count of felony fraud for the cashing of the lottery tickets. The Lonoke County Circuit Court ordered that Spires pay restitution to Mallard Express in the amount of \$14,400 and to the Arkansas Lottery Commission (“Commission”) in the amount of \$9,811. Spires appealed, arguing that the restitution portion of the circuit court’s order amounted to double restitution and that the State had failed to show that the Commission had suffered an economic loss. This case was certified to this court by the Arkansas Court of Appeals pursuant to Arkansas Supreme Court Rule 1-2(b)(5) (2012), because it involves a significant issue needing development or clarification of the law. Because our rules do not allow for appeal from a guilty plea, we dismiss the appeal.

On appeal, Spires challenges only the amount of restitution. She was a manager at

Mallard Express. During her employment, she stole approximately forty-eight books of lottery tickets, valued at \$14,400. She then cashed the winning tickets and received \$9,811 in payments from the Commission.

On July 14, 2011, Spires pled guilty to two counts of theft of property over \$2,500 and one count of felony fraud. Prior to entering her guilty plea, Spires argued to the circuit court that requiring her to pay restitution to both Mallard Express and the Commission amounted to double restitution, as the \$9,811 she received from the Commission was paid for by the \$14,400 paid by Mallard Express for the lottery tickets. The circuit court ruled that Spires must pay both the Commission and Mallard Express for a total restitution amount of \$24,211.

Generally, a defendant cannot appeal from a plea of guilty. Ark. R. App. P.–Crim. 1 (2011). Three exceptions to this rule exist. First, Arkansas Rule of Criminal Procedure 24.3(b) (2011) states that a defendant may enter a conditional plea of guilty, reserving the right in writing, to appeal from the judgment on three grounds, none of which are applicable here. Second, a plea of guilty may also be appealed when the appeal is from a posttrial motion challenging the validity and legality of the sentence itself. *See Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003). Finally, where an appeal from a plea of guilty raises only an issue of sentencing, rather than requiring a review of the plea itself, this court has jurisdiction to entertain the appeal. *See Bailey v. State*, 348 Ark. 524, 74 S.W.3d 622 (2002).

The first exception clearly does not apply here as Spires did not enter a conditional plea of guilty. The second exception also does not apply as Spires did not file a posttrial motion challenging the validity and legality of the sentence, although she did orally inform the circuit

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court that she was maintaining an appeal on the issue of restitution. Therefore, this appeal can proceed only if the third exception applies. We hold that it does not.

Bailey v. State involved a minor who pled guilty to charges of residential burglary and theft of property. 348 Ark. 524, 74 S.W.3d 622 (2002). As a result of his guilty plea, the Craighead County Circuit Court, Juvenile Division, placed Bailey on probation and ordered him to pay restitution “in an amount to be determined within ninety days from the date of the adjudication hearing.” *Id.* at 526, 74 S.W.3d at 623. The record revealed no subsequent order, but both parties averred that he was ordered to pay \$500 in restitution. Thereafter, the State filed a petition seeking to revoke his probation based on an allegation of possession of a controlled substance. The circuit court revoked his probation based on his failure to pay any of the original restitution, and entered an amended order of revocation requiring payment of \$6,785.60 in restitution. Bailey appealed. Because Bailey’s guilty plea required restitution with a specific amount to be decided later, the appeal raised only an issue of sentencing and did not require review of the plea itself. *Id.*

In reviewing Bailey’s claim, we cited *Hill v. State* as authority for the assertion that this court will hear an appeal on an issue of sentencing. 318 Ark. 408, 887 S.W.2d 275 (1994). In *Hill*, this court held that the appeal of non-jurisdictional issues, such as sentencing, was allowed when the review did not constitute a review of the plea itself. This holding was premised in part on the fact that, after the enactment of Arkansas Code Annotated section 16-97-101(6), sentencing became, in essence, a trial in and of itself. *Id.* Because the restitution

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order appealed from in *Bailey* was entered in a hearing after the entry of the guilty plea, it did not require review of the plea itself and this court had jurisdiction to hear the appeal.

The facts in Spires's case are different from those in *Bailey*. The restitution Spires was ordered to pay was not decided separate and apart from the guilty plea; it was decided on the same day prior to the entry of the plea. *Cf Bradford, supra* (holding that this court will hear an appeal of a restitution order when the sentencing hearing took place separate and apart from the guilty plea). In fact, Spires signed a guilty-plea agreement setting out the amount of restitution to be paid before she entered her plea. Because the issue of restitution was not decided separate and apart from the entry of the plea of guilty, the exception set out in *Bailey* and *Hill* does not apply. To the extent that the court of appeals' decisions in *Nix v. State*, 54 Ark. App. 302, 925 S.W.2d 802 (1996), and *Long v. State*, 2009 Ark. App. 97, are inconsistent with this opinion, we overrule them.

Because this appeal does not fall under any of the exceptions that allow an appeal from a guilty plea, this court does not have jurisdiction to hear it and it is dismissed.

Dismissed.

The Lane Firm, by: *Jonathan T. Lane*, for appellant.

Dustin McDaniel, Att'y Gen., by: *LeaAnn J. Irvin*, Ass't Att'y Gen., for appellee.