

**SUPREME COURT OF ARKANSAS**

No. CR 12-241

RODRIQUEZ NELSON  
PETITIONER

v.

STATE OF ARKANSAS  
RESPONDENT

Opinion Delivered May 17, 2012

PRO SE MOTION TO BE DECLARED  
INDIGENT AND PROCEED WITH  
BELATED APPEAL [HEMPSTEAD  
COUNTY CIRCUIT COURT, CR 10-272,  
HON. WM. RANDAL WRIGHT, JUDGE]MOTION DENIED.**PER CURIAM**

On May 31, 2011, judgment was entered reflecting that petitioner Rodriguez Nelson had entered a plea of nolo contendere to aggravated-residential burglary, domestic battering in the first degree, false imprisonment in the first degree, and terroristic threatening. An aggregate sentence of 480 months' imprisonment was imposed. The judgment was later amended to reflect that the sentence imposed was 600 months' imprisonment.

On March 21, 2012, petitioner filed the motion that is now before us, seeking to be declared indigent and requesting leave to proceed with a belated appeal of the judgment of conviction. There are no grounds for the relief in the motion.

Arkansas Rule of Appellate Procedure—Criminal 1(a) (2011) provides that there is no direct appeal from a plea of guilty. An exception is created when a conditional plea of guilty is premised on an appeal of the denial of a suppression motion pursuant to Arkansas Rule of Criminal Procedure 24.3 (2010). See *Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004). Two additional exceptions to the general rule, as set out in *Seibs* and *Grissom v. State*, 2009 Ark. 328

(per curiam), are (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 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). Absent one of the exceptions, a defendant waives his right to appeal when he pleads guilty. *Smith v. State*, 2011 Ark. 54 (per curiam); *Grisson*, 2009 Ark. 328; *see also Berry v. City of Fayetteville*, 354 Ark. 470, 125 S.W.3d 171 (2003); *Barnett v. State*, 336 Ark. 165, 984 S.W.2d 444 (1999). We have held, however, that an appeal may be taken after a guilty plea when the petitioner alleges evidentiary errors that arose after the plea and during the sentencing phase, regardless of whether a jury was impaneled for that phase of trial. *See Tubbs v. State*, 2011 Ark. 166 (per curiam); *see also Johnson v. State*, 2010 Ark. 63.

Petitioner here does not contend that his plea was conditional or that it otherwise met any of the exceptions that would allow for an appeal from the judgment. For that reason, he has not met his burden of establishing that he is entitled to be declared indigent and to proceed with a belated appeal. *See Smith*, 2011 Ark. 54.

Motion denied.