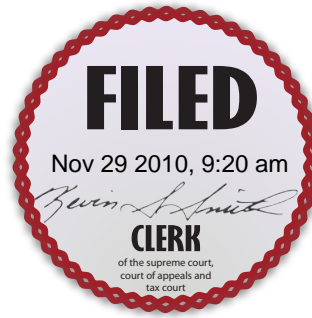


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

TRAVIS W. JACKSON,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 33A04-1006-CR-398

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Bob A. Witham, Judge
Cause No. 33D02-1004-FD-0092

November 29, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Travis W. Jackson (“Jackson”) pleaded guilty in Henry Superior Court to Class D felony stalking and Class A misdemeanor resisting law enforcement. Jackson appeals and argues that he did not knowingly and voluntarily waive his right to counsel at the time he pleaded guilty. Concluding that Jackson may not challenge the validity of his guilty plea on direct appeal, we dismiss.

Facts and Procedural History

On April 16, 2010, the State charged Jackson with Class D felony stalking and Class A misdemeanor resisting law enforcement. At an initial hearing held the same day, the trial court advised Jackson of the rights he would be giving up if he pleaded guilty, including the right to counsel, but the trial court did not specifically warn Jackson of the dangers of pleading guilty without the advice of counsel. After the advisements, Jackson indicated that he still wished to plead guilty. The trial court then determined that Jackson’s plea was freely and voluntarily made and that there was a factual basis for the plea. The court took the plea under advisement and scheduled a sentencing hearing. At the sentencing hearing, the trial court accepted the plea and sentenced Jackson to two years for the stalking conviction and a concurrent one-year term for the resisting law enforcement conviction. Jackson now appeals.

Discussion and Decision

Jackson claims that the trial court erred by failing to advise him of the nature, extent, and importance of the right to counsel and the consequences of waiving it. Without such an advisement, Jackson claims his decision to plead guilty was not knowingly or voluntarily made and that we should therefore reverse his convictions.

It is well-settled that a person who pleads guilty is not permitted to challenge the propriety of that conviction on direct appeal. Collins v. State, 817 N.E.2d 230, 231 (Ind. 2004) (citing Tumulty v. State, 666 N.E.2d 394, 395 (Ind. 1996)).¹ Here, the sole issue presented in Jackson's appeal attacks the validity of his guilty plea, which is an attack on the propriety of the conviction that cannot be presented on direct appeal. See Tumulty, 666 N.E.2d at 395-96 (holding that defendant's claim that his guilty plea was invalid because there was no factual basis to support the plea was an argument that could not be presented on direct appeal); see also Stringer v. State, 899 N.E.2d 748, 750 (Ind. Ct. App. 2009) (concluding that defendant's appellate challenge was an attack on the knowing and voluntary nature of his plea due to the inadequacies of the trial court's advisements to him and could not be undertaken on direct appeal); Hines v. State, 856 N.E.2d 1275, 1279-80 (Ind. Ct. App. 2006) (concluding that defendant's claim that he did not knowingly and intelligently waive Blakely rights when he pleaded guilty was an attack on the validity of the guilty plea that could not be brought on direct appeal).

Jackson's challenge to the validity of his guilty plea must instead be made by means of a petition for post-conviction relief. See Tumulty, 666 N.E.2d at 396; Stringer, 899 N.E.2d at 750; Hines, 856 N.E.2d at 1280. Because the sole issue Jackson presents

¹ A person who pleads guilty is entitled to contest on direct appeal the merits of a trial court's sentencing decision where the trial court has exercised sentencing discretion, i.e., where the sentence is not fixed by the plea agreement. Id. Also, a defendant who pleads guilty is entitled to challenge on direct appeal the trial court's discretion in denying the defendant's request to withdraw a guilty plea prior to sentencing. Brightman v. State, 758 N.E.2d 41, 44 (Ind. 2001); Allen v. State, 865 N.E.2d 686, 688-89 (Ind. Ct. App. 2007).

on appeal is unavailable to him on direct appeal, we dismiss this appeal for lack of subject matter jurisdiction.

Dismissed.

BAKER, C.J., and NAJAM, J., concur.