

IN THE UTAH COURT OF APPEALS

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| State of Utah, |) | PER CURIAM DECISION |
| |) | |
| Plaintiff and Appellee, |) | Case No. 20110251-CA |
| |) | |
| v. |) | FILED |
| |) | (June 3, 2011) |
| Dustin Dewitt, |) | |
| |) | |
| Defendant and Appellant. |) | 2011 UT App 177 |

Fifth District, St. George Department, 091500357
The Honorable G. Rand Beacham

Attorneys: Gary G. Kuhlmann, St. George, for Appellant
Mark L. Shurtleff and Marian Decker, Salt Lake City, for Appellee

Before Judges Davis, Orme, and Roth.

¶1 This case is before the court on a sua sponte motion for summary disposition for lack of jurisdiction on the basis that the district court did not sentence Defendant following his convictions based upon a conditional no contest plea to two third degree felonies. "In a criminal case, it is the sentence itself which constitutes a final judgment from which the appellant has a right to appeal." *State v. Bowers*, 2002 UT 100, ¶ 5, 57 P.3d 1065. This requirement is not altered in cases involving a conditional plea of guilty or no contest. *See American Fork City v. Singleton*, 2001 UT App 178U (mem.) (per curiam) (dismissing appeal without prejudice where the district court did not sentence a defendant following entry of a conditional guilty plea). No final, appealable judgment has been entered from which an appeal can be taken.

¶2 Based upon the procedural status of this case, Defendant’s appellate counsel “agrees that this case should be summarily dismissed without prejudice due to lack of jurisdiction to consider the appeal.”¹ Accordingly, we dismiss this appeal without prejudice to a timely appeal filed after the entry of a final, appealable order.

James Z. Davis,
Presiding Judge

Gregory K. Orme, Judge

Stephen L. Roth, Judge

¹Because we dismiss this appeal without prejudice for lack of jurisdiction on our own motion, it is not necessary for Defendant’s counsel to comply with the provisions of rule 37(b) of the Utah Rules of Appellate Procedure by providing an affidavit from Defendant.