

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20070333-CA
v.)	
)	F I L E D
Dianna Lee Almanza,)	(August 9, 2007)
)	
Defendant and Appellant.)	2007 UT App 277

Third District, West Jordan Department, 061401579
The Honorable Royal I. Hansen

Attorneys: Debra M. Nelson and Michael Masse, Salt Lake City,
 for Appellant
 Mark L. Shurtleff and Kris C. Leonard, Salt Lake
 City, for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

This matter is before the court on its sua sponte motion for summary disposition due to lack of jurisdiction.

Dianna Lee Almanza was charged with assault by a prisoner, theft, and criminal trespass. Almanza entered into a plea agreement with the State. As a result, on March 20, 2007, she pleaded no contest to assault by a prisoner, a class A misdemeanor. Almanza never filed a motion to withdraw her plea prior to sentencing. In fact, Almanza waived the time for sentencing and was sentenced that day.

In order to challenge the validity of a guilty plea, a defendant must first file a motion to withdraw her plea before the sentence is announced. See Utah Code Ann. § 77-13-6(2)(b) (Supp. 2006); State v. Merrill, 2005 UT 34, ¶¶13-20, 114 P.3d 585. Absent a timely-filed motion to withdraw a guilty plea, this court does not have jurisdiction over a direct appeal to review the validity of the plea. See Merrill, 2005 UT 34 at ¶¶13-20; see also Utah Code Ann. § 77-13-6(2)(c) ("Any challenge to a guilty plea not made within the time period specified in

Subsection (2)(b) shall be pursued under Title 78, Chapter 35a, Post-Conviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure.").

Almanza has cited only one issue on appeal, i.e., whether her plea was voluntarily made. Such issue relates to the validity of the plea. Because Almanza never filed a motion to withdraw her plea prior to sentencing, this court lacks jurisdiction to review the issue and has no choice but to dismiss the appeal. See Merrill, 2005 UT 34 at ¶20. If Almanza seeks to challenge the validity of her plea she must do so pursuant to Utah Code section 77-13-6(2)(c).

Accordingly, we dismiss the appeal.

Russell W. Bench,
Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge