

IN THE UTAH COURT OF APPEALS

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Payson City,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20050503-CA
v.	)	
	)	F I L E D
Lisa A. Bouvier,	)	(September 9, 2005)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2005 UT App 375</span>

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Fourth District, Spanish Fork Department, 041300903  
The Honorable Howard H. Maetani

Attorneys: Sheldon R. Carter, Provo, for Appellant  
David C. Tuckett and Shaynie R. Hunter, Payson, for Appellee

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Before Judges Davis, Greenwood, and Thorne.

PER CURIAM:

Lisa Bouvier appeals from the district court's denial of her motion to withdraw a guilty plea entered in the Payson City Justice Court. This case is before the court on a sua sponte motion for summary dismissal for lack of jurisdiction.

"A defendant convicted and sentenced in justice court is entitled to a hearing de novo in district court . . . if he files a notice of appeal within 30 days of . . . an order denying a motion to withdraw a plea." Utah Code Ann. § 78-5-120(3)(d) (2002). "The decision of the district court may not be appealed unless the district court rules on the constitutionality of a statute or ordinance." Id. § 78-5-120(7).

This case is indistinguishable from Draper City v. Roper, 2003 UT App 312, 78 P.3d 631. In both cases, a defendant pleaded guilty in justice court, then filed a motion to withdraw the guilty plea. See id. at ¶3. After the justice court denied the motion to withdraw, the defendant appealed the denial of the motion to the district court and obtained a hearing de novo. See id. The defendant "did not raise and the district court did not rule on the constitutionality of a statute or ordinance." Id. Therefore, the district court's decision was final and could not

be appealed to this court. See id. "[S]ection 78-5-120 limits this court's review of a district court 'decision' and makes no distinction between a decision in a trial and a decision in a hearing de novo." Id. at ¶4. "Any right Defendant had to appeal the denial of [her] motion to withdraw [the] plea by the justice court . . . was satisfied by the hearing de novo in the district court." Id. at ¶5.

Bouvier argues that the district court's ruling "found the provisions of Utah Code section 77-13-6 to be constitutional despite the fact the conviction was obtained without benefit of counsel." Bouvier misrepresents the record. The district court's order denying her motion to withdraw a guilty plea contained no ruling on the constitutionality of section 77-13-6. Even the proposed order prepared by Bouvier's counsel, which the district court declined to sign, did not include a ruling on the constitutionality of the statute. Even a liberal construction of Bouvier's pleadings does not support a conclusion that they challenged the constitutionality of any statute. Bouvier simply reargues the merits of her case without squarely addressing the jurisdictional prerequisites to pursue an appeal to this court.

Because the district court did not rule on the constitutionality of a statute or ordinance in the hearing de novo, this court lacks jurisdiction to consider Bouvier's appeal. "When a matter is outside the court's jurisdiction it retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). Accordingly, we dismiss the appeal for lack of jurisdiction.

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James Z. Davis, Judge

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Pamela T. Greenwood, Judge

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William A. Thorne Jr., Judge