

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20070323-CA
v.)	
)	F I L E D
Steve Wallace Carter,)	(August 14, 2008)
)	
Defendant and Appellant.)	2008 UT App 303

Second District, Ogden Department, 041906854
The Honorable Scott M. Hadley

Attorneys: Dee W. Smith, Ogden, for Appellant
 Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake
 City, for Appellee

Before Judges Greenwood, Billings, and McHugh.

PER CURIAM:

Steve Wallace Carter appeals from his conviction of use of a controlled substance. Carter argues that the district court erred in failing to grant him a hearing on his pro se motion to withdraw his plea and in failing to inquire into his complaints about his attorney. We affirm.

Carter first asserts that the district court failed to grant him a hearing after Carter sent several pro se letters to the district court, which Carter asserts should have been construed as motions to withdraw his plea. This court has recently explained that

a criminal defendant may either file pro se motions if he or she has opted for self representation, or file motions through counsel if represented. "When a defendant is represented by counsel, he generally has no authority to file pro se motions, and the court should not consider them." The defendant may choose self-representation or the assistance of counsel, but is not entitled to a "hybrid representation" where

he could both enjoy the assistance of counsel and file pro se motions. The only exception to this rule is that a defendant may file a pro se motion to disqualify his appointed counsel.

State v. Wareham, 2006 UT App 327, ¶ 33, 143 P.3d 302 (citations omitted). At the time Carter sent the trial court the letters he claims should have been construed as motions to withdraw his plea, he was represented by counsel. Because Carter was represented by counsel, he was required "to either file motions through his counsel or seek to dismiss his counsel and proceed pro se." Id. ¶ 32. Accordingly, the district court did not err in refusing to construe Carter's letters to the court as motions to withdraw his plea or by not scheduling a hearing on the issue.

Carter next argues that the district court abused its discretion in failing to inquire into Carter's complaints about his attorney, which were contained in Carter's various correspondence to the court. Because the correspondence regarding this issue concerned the performance of Carter's appointed counsel, the prohibition against filing pro se motions when a defendant is represented by counsel does not apply. See id. ¶ 33. When a defendant expresses dissatisfaction with his attorney, Utah law requires a trial court to "make some reasonable, non-suggestive efforts to determine the nature of the defendant's complaints" so that the court can determine whether substitution of counsel is necessary. State v. Pursifell, 746 P.2d 270, 273 (Utah Ct. App. 1987). The court never conducted such an inquiry. However, Carter is prohibited from raising the argument on appeal because he either withdrew any objections he had to his attorney or invited any alleged error by the district court. See State v. Perdue, 813 P.2d 1201, 1205 (Utah Ct. App. 1991) (stating that the doctrine of invited error prevents a party from "setting up an error at the trial court and then complaining about it on appeal" (internal quotation marks omitted)). Here, after initially sending correspondence to the court calling into question the effectiveness of his counsel, Carter sent the following letter to the court:

I am writing you in regards to the case as above. For some time I experienced major anxiety concerning my plea. This as I could not believe that the mere use of drugs could carry such a heavy penalty. I believe my attorney . . . has counseled me correctly. Not only as regards the court/legal penalties, but also to my health.

His letter went on to state: "Please accept my apology to the Court for the trouble I have caused. . . . I will accept any treatment, supervision, or consequences Your Honor deems necessary." Thus, Carter either withdrew any complaint he had regarding his counsel or otherwise misled the court into believing that it was no longer necessary to inquire as to any problems Carter may have been having with his attorney.

Subsequent proceedings also support the conclusion that Carter either withdrew any objection he had regarding his attorney or invited the error of which he now claims. Specifically, after his sentencing was delayed on a couple of occasions so Carter could seek private counsel, Carter filed a "motion for dismissal." In this motion Carter indicated that after his plea he had been diagnosed with "paranoid schizophrenia." He added that his attorney had not known of the mental disorder and could not have fairly defended him prior to the plea, thereby indicating that he had no problems with his counsel's prior representation. Consequently, the court continued sentencing until his counsel could obtain Carter's mental health records from the prison. After several further delays resulting from the difficulty in obtaining the records, Carter's counsel was eventually able to obtain Carter's mental health records from the Utah State Prison. After reviewing those records, Carter's counsel informed the court that he would not be filing a motion to withdraw the plea. Carter was eventually sentenced on March 20, 2007. Prior to sentencing Carter was again given the opportunity to discuss any problems he had with his counsel. However, in response to the district court's question, Carter indicated that he wanted to go forward with sentencing. Thus, the totality of circumstances demonstrate that Carter had either withdrawn any claims concerning problems he may have had with his counsel or Carter was simply injecting invited error into the proceedings. Accordingly, Carter may not raise the claim on appeal.

Affirmed.

Pamela T. Greenwood,
Presiding Judge

Judith M. Billings, Judge

Carolyn B. McHugh, Judge