

IN THE UTAH COURT OF APPEALS

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| State of Utah, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Plaintiff and Appellee, |) | |
| |) | Case No. 20051037-CA |
| v. |) | |
| |) | F I L E D |
| Erick Alan Dawson, |) | (November 9, 2006) |
| |) | |
| Defendant and Appellant. |) | 2006 UT App 451 |

Second District, Farmington Department, 031701191
The Honorable Thomas L. Kay

Attorneys: Scott L. Wiggins, Salt Lake City, for Appellant
Mark L. Shurtleff and Karen A. Klucznik, Salt Lake
City, for Appellee

Before Judges Bench, Billings, and McHugh.

PER CURIAM:

Erick Alan Dawson entered a guilty plea to a single count of illegal possession of a controlled substance, a third degree felony. At sentencing, Dawson asked the court if he could withdraw his guilty plea. The district court ruled that Dawson had waived his right to withdraw his plea and that the time to make the motion had expired, stating:

[O]nce you've entered a guilty plea, the time to file a Motion to Withdraw the Guilty Plea is prior to the time, it must be done in writing prior to the time of sentencing. This is the time of sentencing. We've begun sentencing and in the middle of sentencing you asked me to file it. I found that you waived your time to do so and it was not done in writing prior to today's sentencing.

Dawson claims that the district court misinterpreted Utah Code section 77-13-6(2)(b) by ruling that Dawson had waived his right to move to withdraw his guilty plea by not filing a written motion prior to the sentencing hearing. See Utah Code Ann. § 77-

13-6(2)(b) (Supp. 2006). The State agrees and the parties filed a joint motion for summary reversal. We grant that motion.

We agree that to the extent the court ruled on the motion to withdraw, its ruling was based on procedural grounds. Section 77-13-6(2)(b) provides that "[a] request to withdraw a plea of guilty . . . shall be made by motion before sentence is announced." Id. The plain language of section 77-13-6(2)(b) requires a motion to withdraw to be made before the sentence is announced; however, it does not support the district court's ruling that the motion must have been filed in writing before the sentencing hearing began. See id. In addition, rule 12(a) of the Utah Rules of Criminal Procedure requires motions to be in writing "unless made during a trial or hearing." Utah R. Crim. P. 12(a). Dawson orally moved to withdraw his guilty plea at the sentencing hearing but before announcement of the sentence. Under the plain language of section 77-13-6(2)(b), the motion was both properly made and timely. See Utah Code Ann. § 77-13-6(2)(b) (Supp. 2006). The district court should have considered the motion on its merits.

Accordingly, we grant the joint motion for summary reversal, vacate the sentence, and remand the case to the district court for consideration of the motion to withdraw the guilty plea on its merits, and for resentencing, as necessary.

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge

Carolyn B. McHugh, Judge