

IN THE UTAH COURT OF APPEALS

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Jose Galvan,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20070644-CA
v.)	
)	F I L E D
State of Utah,)	(December 20, 2007)
)	
Respondent and Appellee.)	2007 UT App 402

Second District, Ogden Department, 031905194
The Honorable W. Brent West

Attorneys: Jose Galvan, Draper, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

Appellant Jose Galvan filed successive petitions for post-conviction relief and related motions to withdraw his 2003 guilty pleas. This appeal is limited to review of the July 6, 2007 decision denying Galvan's third motion to withdraw his guilty plea and a petition for post-conviction relief. Galvan's notice of appeal was filed within thirty days of the July 6, 2007 decision and confers jurisdiction over an appeal from that decision. To the extent that Galvan seeks to appeal the April 15, 2004 judgment and sentence, which also denied his timely motions to withdraw his guilty pleas, we lack jurisdiction.

Galvan was charged with one count of aggravated kidnapping and one count of aggravated sexual assault, both first degree felonies. Pursuant to a plea negotiation, he entered guilty pleas to two counts of forcible sexual abuse, a second degree felony, on December 10, 2003. Galvan claims that he agreed to plead guilty to a single count of attempted forcible sexual abuse, a class A misdemeanor, with the understanding that he would be sentenced to serve six months in jail. He also claims that no one explained the plea agreement to him in Spanish.

The district court correctly concluded that Galvan's third motion to withdraw his guilty pleas was untimely and could not be considered on the merits. See State v. Merrill, 2005 UT 34, ¶¶ 13-20, 114 P.3d 585 (holding a trial court is without jurisdiction to reach the merits of an untimely motion to withdraw a guilty plea). Although Galvan made timely motions to withdraw his guilty pleas prior to sentencing, the district court denied those timely motions in the final judgment entered on April 15, 2004, which Galvan did not appeal. Accordingly, the district court lacked jurisdiction to consider the merits of the third motion to withdraw the guilty pleas.

In its response to the sua sponte motion, the State attaches a November 21, 2005 decision in case number 050906251, also from the Second District Court. In that decision, the district court ruled that all motions to withdraw the guilty pleas filed after sentencing were untimely and that it lacked jurisdiction to consider them on the merits. However, the district court required the State to file a response to an earlier petition for post-conviction relief. In an April 4, 2006 order, the district court dismissed the petition for post-conviction relief on the ground that Galvan had appealed the November 21, 2005 decision. The dismissal was without prejudice to the filing of a new petition for post-conviction relief, and it did not reach the merits of the petition.

The July 6, 2007 decision that Galvan now appeals denied a petition for post-conviction relief filed on June 18, 2007, which again claimed that Galvan agreed to plead guilty to a single count of attempted forcible sexual abuse, a class A misdemeanor, with the promise that he would receive a sentence of six months in jail.¹ The district court stated that it had reviewed Galvan's written statement in advance of his December 2003 guilty pleas and the transcripts of the colloquy conducted under rule 11 of the Utah Rules of Criminal Procedure. The district court concluded that those materials demonstrated that Galvan pleaded guilty to the two second degree felonies. The district court also found that "the record reflects that Defendant always had a court certified Spanish interpreter present and available to interpret for him" and "the written plea agreement was written in both English and Spanish." Ultimately, the district court denied the third motion to withdraw his plea as untimely and dismissed the post-conviction petition as frivolous on its face because the same issues had been addressed on the merits in the previous

¹It is not clear why the district court filed the June 2007 petition in the criminal case, rather than assigning a new case number. However, we do not deem this to have jurisdictional significance.

denial of Galvan's timely motions to withdraw his guilty pleas.
The decision is amply supported by the record.

We affirm.

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge

James Z. Davis, Judge