

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20051050-CA	
v.)		
)	F I L E D	
Edson G. Gardner,)	(January 12, 2006)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2006 UT App 12</td></tr></table>	2006 UT App 12
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Eighth District, Vernal Department, 055800015
The Honorable John R. Anderson

Attorneys: Edson G. Gardner, Fort Duchesne, Appellant Pro Se
Gregory M. Lamb, Vernal, for Appellee

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Edson G. Gardner appeals his conviction of speeding following a trial de novo in a case originating in justice court. This case is before the court on a sua sponte motion for summary dismissal for lack of jurisdiction.

The appeal is subject to limits on this court's jurisdiction imposed by Utah Code section 78-5-120(7), which states: "The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance." Utah Code Ann. § 78-5-120(7) (2002). We have stated that by enacting section 78-5-120, "the Utah Legislature . . . specifically and intentionally limited the issues that may be appealed from a district court's judgment." State v. Hinson, 966 P.2d 273, 276 (Utah Ct. App. 1998). Accordingly, "absent an issue regarding the constitutionality of a statute or ordinance, the decision of the district court is final and this court has no jurisdiction to hear an appeal thereof." Id. at 277. In addition, our "appellate jurisdiction is limited only to those issues attacking the validity or constitutionality of an ordinance or statute." Id. Because the district court in this case did not rule on the constitutionality of a statute or ordinance, we lack jurisdiction to consider the appeal.

If an issue is beyond our appellate jurisdiction under section 78-5-120(7), we have held that "pursuit of an extraordinary writ is procedurally correct." Dean v. Henriod, 1999 UT App 50, ¶8, 975 P.2d 946. Gardner purportedly invokes this court's jurisdiction under rule 65B of the Utah Rules of Civil Procedure. However, we construe this case as an appeal from the judgment of the district court following the trial de novo. Gardner did not file an appropriate petition for extraordinary relief directed to either the Eighth District Court or the district court judge. See Utah R. Civ. P. 65B(d)(2)(A) (authorizing relief where an inferior court has exceeded its jurisdiction); see also Utah R. App. P. 19(a) ("An application for an extraordinary writ referred to in Rule 65B, Utah Rules of Civil Procedure, . . . directed to a judge, agency, person or entity shall be made by filing a petition with the clerk of the appellate court . . ."). Accordingly, Gardner did not invoke our jurisdiction to consider a petition for extraordinary relief.

We dismiss the appeal because the issues raised are not within our jurisdiction under Utah Code section 78-5-120(7). Our dismissal is without prejudice to the filing of an appropriate petition for extraordinary relief raising the issues that Gardner sought to raise on direct appeal and fully complying with the provisions of rule 65B of the Utah Rules of Civil Procedure and rule 19 of the Utah Rules of Appellate Procedure.

James Z. Davis, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge