

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20061034-CA
v.)	
)	F I L E D
Clifford Hudson,)	(January 25, 2007)
)	
Defendant and Appellant.)	2007 UT App 23

Third District, Salt Lake Department, 051907387
The Honorable Stephen L. Henriod

Attorneys: Mary C. Corporon, Salt Lake City, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Bench, McHugh, and Orme.

PER CURIAM:

Appellant Clifford Hudson appeals both his conviction following a guilty plea to criminal non-support, a third degree felony, and his sentence.

"A request to withdraw a plea of guilty or no contest . . . shall be made by motion before sentence is announced." Utah Code Ann. § 77-13-6(2)(b) (Supp. 2006). Hudson did not move to withdraw his guilty plea prior to the announcement of sentence. He argues that the ineffectiveness of his trial counsel prevented him from filing a timely motion to withdraw and he should be allowed to develop that claim on appeal. However, failure to file a timely motion to withdraw a guilty plea "extinguishes a defendant's right to challenge the validity of the guilty plea on appeal," State v. Reyes, 2002 UT 13, ¶3, 40 P.3d 630, including a challenge to the guilty plea based on ineffective assistance of counsel. See State v. Briggs, 2006 UT App 448, ¶6, 147 P.3d 969 ("[B]ecause Defendant failed to timely file a motion to withdraw his guilty plea, this court lacks jurisdiction to consider his ineffective assistance of counsel claim."). Absent a timely motion to withdraw, we lack jurisdiction to consider whether a defendant received ineffective assistance of counsel in

connection with entry of a guilty plea. See id.; see also State v. Merrill, 2005 UT 34, ¶¶17-20, 114 P.3d 585 (confirming that the time limit in section 77-13-6 is jurisdictional). Any challenge to a guilty plea not raised in a timely motion to withdraw must be pursued under the Post-Conviction Remedies Act and rule 65C of the Utah Rules of Civil Procedure. See Utah Code Ann. § 77-13-6(2)(c).

"A sentence will not be overturned on appeal unless the trial court has abused its discretion, failed to consider all legally relevant factors, or imposed a sentence that exceeds legally prescribed limits." State v. Nuttall, 861 P.2d 454, 456 (Utah Ct. App. 1993). Hudson's sentence is within the statutory range for a third degree felony, i.e., an indeterminate prison term of zero-to-five years and a \$5000 fine suspended upon successful completion of probation. The court placed Hudson on "thirty-six months probation to be extended until the entire amount of restitution is [paid] in full," and required him to serve 365 days in jail. The court required him to pay restitution for his past due child support in the amount of \$118,483.72 as of August 2006, as incorporated in the plea agreement. Utah Code section 76-3-201(4)(a) requires a court to order restitution "for conduct for which the defendant has agreed to make restitution as part of a plea agreement." Utah Code Ann. § 76-3-201(4)(a) (Supp. 2006); see also id. § 77-38a-302(12) (Supp. 2006) (requiring court to order restitution "for conduct for which the defendant has agreed to make restitution as a part of a plea bargain"). The court ordered Hudson to make payments of \$2000 per month to be applied to his ongoing child support and restitution beginning thirty days after his release from jail. His claim that the monthly amount due under the sentencing order was \$4000 is incorrect. The district court did not abuse its discretion in requiring Hudson to pay restitution.

Hudson claims that the district court abused its discretion by continuing probation until restitution is paid. He contends that the court sentenced him "to a period of probation far in excess of the time allowed by law, of 36 months." See id. § 77-18-1(10)(a)(i) (Supp. 2006). However, the Utah Supreme Court recently held that Utah Code section 77-18-1(10)(a)(i) "does not impose any limitation on the length of probationary term that a court may impose" and that "the Utah Code imposes no statutory time limitation on probation." State v. Wallace, 2006 UT 86, ¶¶13,16, 567 Utah Adv. Rep. 41. In addition, a court may make payment of victim restitution a condition of probation. See Utah Code Ann. § 77-18-1(8)(a)(ix). Restitution payment may be enforced through continuation of probation or through contempt proceedings based upon failure to pay restitution. See State v.

Nones, 2000 UT App 211, ¶13, 11 P.3d 709. In addition, Utah Code section 77-18-1(10)(a)(ii) states:

If, upon expiration or termination of the probation period under Subsection (10)(a)(I), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable.

Utah Code Ann. § 77-18-1(10)(a)(ii)(A); see also id. § 76-3-201.1(1)(b) (Supp. 2006) (stating "Accounts receivable" includes "restitution to victims"). The district court did not abuse its discretion in ordering that probation would be extended until restitution is paid.

We dismiss the appeal for lack of jurisdiction insofar as it seeks to challenge the guilty plea and conviction. We affirm the sentencing order as entered by the district court.

Russell W. Bench,
Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge