

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20070603-CA
v.)	
)	F I L E D
Travis Adam Johnson,)	(October 12, 2007)
)	
Defendant and Appellant.)	2007 UT App 333

Eighth District, Vernal Department, 061800340
The Honorable A. Lynn Payne

Attorneys: Michael L. Humiston, Heber City, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Bench, Orme, and Thorne.

PER CURIAM:

Travis Adam Johnson appeals his convictions for wrongful appropriation and reckless driving with drugs. This matter is before the court on its sua sponte motion for summary disposition due to lack of jurisdiction.

Johnson was charged with wrongful appropriation, reckless driving, and driving on a revoked or suspended license. Johnson entered into a plea agreement with the State. As a result, on November 1, 2006, he pleaded guilty to the first two charges, and the State dismissed the third. Johnson never filed a motion to withdraw his plea prior to sentencing, which took place on May 29, 2007.

In order to challenge the validity of a guilty plea, a defendant must first file a motion to withdraw his plea before the sentence is announced. See Utah Code Ann. § 77-13-6(2)(b) (Supp. 2007); Grimmett v. State, 2007 UT 11, ¶25, 152 P.3d 306. Absent a timely-filed motion to withdraw a guilty plea, this court does not have jurisdiction over a direct appeal to review the validity of the plea. See Grimmett, 2007 UT 11 at ¶25; see also Utah Code Ann. § 77-13-6(2)(c) ("Any challenge to a guilty plea not made within the time period specified in Subsection

(2)(b) shall be pursued under Title 78, Chapter 35a, Post-Conviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure."). This includes the ability to challenge the plea on the basis of ineffective assistance of counsel. State v. Merrill, 2005 UT 34, ¶¶17-19, 114 P.3d 585.

Johnson has cited only two issues on appeal, i.e., whether his plea was made knowingly and voluntarily and whether his trial counsel was ineffective. Both issues relate to the validity of the plea. Because Johnson never filed a motion to withdraw his plea prior to sentencing, this court lacks jurisdiction to review the issue and has no choice but to dismiss the appeal. See Grimmer, 2007 UT 11 at ¶25. If Johnson seeks to challenge the validity of his plea he must do so pursuant to Utah Code section 77-13-6(2)(c).

Accordingly, we dismiss the appeal.

Russell W. Bench,
Presiding Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge