

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050406-CA
v.)	
)	F I L E D
Vidar Kilicer,)	(May 25, 2006)
)	
Defendant and Appellant.)	2006 UT App 213

Third District, Salt Lake Department, 041904765
The Honorable Denise P. Lindberg

Attorneys: Hakeem Ishola, Salt Lake City, for Appellant
Mark L. Shurtleff and Christopher D. Ballard, Salt
Lake City, for Appellee

Before Judges Bench, Davis, and McHugh.

BENCH, Presiding Judge:

Defendant Vidar Kilicer appeals the trial court's denial of his motion to withdraw his guilty pleas to one count of theft, in violation of Utah Code section 76-6-404, and one count of burglary, in violation of Utah Code section 76-6-202, both third degree felonies. See Utah Code Ann. §§ 76-6-202 and -404 (2003).

Defendant argues that the trial court erroneously denied his motion to withdraw his guilty pleas. Utah Code section 77-13-6(2)(b) provides that "[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. 2005). The trial court sentenced Defendant on March 4, 2005. More than a month later, Defendant filed a motion to withdraw his guilty pleas. The trial court therefore correctly concluded that it lacked jurisdiction to consider the untimely motion. See State v. Merrill, 2005 UT 34, ¶20, 114 P.3d 585 (holding that section 77-13-6(2)(b) is jurisdictional).

Defendant asserts that the trial court's application of section 77-13-6(2)(b) violated his due process and equal protection rights. Defendant, however, did not raise the constitutionality of section 77-13-6(2)(b) with the trial court. He therefore has not preserved his constitutional claims. "[I]n general, [we] will not consider an issue, including constitutional arguments, raised for the first time on appeal

unless the trial court committed plain error or the case involves exceptional circumstances." State v. Dean, 2004 UT 63, ¶13, 95 P.3d 276. On appeal, Defendant has not analyzed his constitutional claims as plain error or exceptional circumstances, and therefore we will not consider the merits of his claims. See id.

Further, even if Defendant had properly preserved his constitutional claims, they are not ripe for adjudication. In Merrill, the court held that because section 77-13-6 allows a defendant who files an untimely motion to pursue a claim under the Post-Conviction Remedies Act (the PCRA), the statute does not violate due process or equal protection rights. See Merrill, 2005 UT 34 at ¶¶30, 46-47. Defendant argues that this case is distinguishable from Merrill because Defendant is not a citizen who can comply with the PCRA rules. Specifically, Defendant cites rule 65C(k) of the Utah Rules of Civil Procedure, which states that "[t]he petitioner shall be present before the court at hearings on dispositive issues but need not otherwise be present in court during the proceeding." Utah R. Civ. P. 65C(k). Defendant argues that he cannot comply with the rule's requirement that he be physically present because he is in federal custody awaiting deportation.

Defendant, however, has not pursued a claim under the PCRA. An issue is not ripe when the "controversy . . . has not yet sharpened into an actual or imminent clash of legal rights and obligations between the parties thereto." State v. Herrera, 895 P.2d 359, 371 (Utah 1995) (quotations and citation omitted). Because "there exists no more than a difference of opinion regarding the hypothetical application of a piece of legislation to a situation in which the parties might, at some future time, find themselves, the question is unripe for adjudication." Id. (quotations and citation omitted).

Accordingly, we affirm.

Russell W. Bench,
Presiding Judge

WE CONCUR:

James Z. Davis, Judge

Carolyn B. McHugh, Judge