

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20100022-CA	
v.)		
)	F I L E D	
James Harvey Larsen,)	(April 8, 2010)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2010 UT App 80</td></tr></table>	2010 UT App 80
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Third District, West Jordan Department, 091401344
The Honorable Mark S. Kouris

Attorneys: Debra M. Nelson and Matthew A. Barraza, Salt Lake
City, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Davis, Thorne, and Roth.

PER CURIAM:

James Harvey Larsen appeals his convictions of two counts of stalking. This matter is before the court on its sua sponte motion for summary disposition due to lack of jurisdiction.

On November 24, 2009, Larsen entered into a plea agreement with the State, pleading guilty to two counts of stalking. Larsen never filed a motion to withdraw his plea prior to sentencing. In fact, Larsen waived the time for sentencing and was sentenced the same day he entered the plea.

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) (2008); State v. Merrill, 2005 UT 34, ¶¶ 13-20, 114 P.3d 585. 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 Merrill, 2005 UT 34, ¶¶ 13-20; 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 78B, Chapter 9, Post-Conviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure.").

Larsen has cited only one issue on appeal, i.e., whether his guilty plea was coerced because he was being held in custody while the case was pending and the prosecutor had recommended release from jail as part of the plea agreement. Such issue relates to the validity of the plea. Because Larsen 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 Merrill, 2005 UT 34, ¶ 20. If Larsen 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.

James Z. Davis,
Presiding Judge

William A. Thorne Jr., Judge

Stephen L. Roth, Judge