

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20050611-CA	
v.)		
)	F I L E D	
Connie Sue Lebow,)	(February 2, 2006)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2006 UT App 27</td></tr></table>	2006 UT App 27
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Seventh District, Monticello Department, 051700037
The Honorable Lyle R. Anderson

Attorneys: William L. Schultz, Moab, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Greenwood, McHugh, and Orme.

PER CURIAM:

Connie Sue Lebow appeals her conviction on a drug charge after pleading guilty. This is before the court on Lebow's motion for a remand pursuant to Utah Rule of Appellate Procedure 23B and on the State's motion for summary disposition based on lack of jurisdiction.

Although Lebow pleaded guilty and seeks to attack that plea on appeal, albeit on a theory of ineffective assistance of counsel, she did not file a motion to withdraw her plea in the district court. Her failure to timely file a motion to withdraw her plea bars this court from considering her challenge to the validity of her plea on appeal.

Pursuant to Utah Code section 77-13-6, a request to withdraw a guilty plea must be made by a motion filed prior to sentencing. See Utah Code Ann. § 77-13-6(2)(b) (2003). The failure to timely file a 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; see also, State v. Merrill, 2005 UT 34, 114 P.3d 585 (holding the time limit in section 77-13-6 is jurisdictional). Absent a timely motion to withdraw a plea, appellate courts lack jurisdiction to

consider any issue attacking the guilty plea itself, including whether a defendant received ineffective assistance of counsel in the plea agreement. See Merrill, 2005 UT 34 at ¶¶17-19; State v. Melo, 2001 UT App 392, ¶¶6-8, 40 P.3d 646. Because Lebow failed to timely move to withdraw her guilty plea, this court lacks jurisdiction to consider her claim that she received ineffective assistance of counsel in connection with her plea. Lebow has not raised any other issue that this court may review.

Accordingly, this appeal is dismissed for lack of jurisdiction. Furthermore, based on the dismissal, Lebow's motion for remand is denied as moot.

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge