

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20050700-CA	
v.)		
)	F I L E D	
Stephen Alfred Mallen,)	(October 14, 2005)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2005 UT App 443</td></tr></table>	2005 UT App 443
2005 UT App 443			

Third District, Salt Lake Department, 051902589
The Honorable Judith S. Atherton

Attorneys: Patrick S. Tan, Salt Lake City, for Appellant

Before Judges Bench, Greenwood, and Thorne.

PER CURIAM:

Stephen Alfred Mallen appeals his conviction after entering a guilty plea. On appeal, he asserts his plea was not knowingly and voluntarily made and seeks to withdraw the plea. The appeal is before the court on its own motion for summary disposition due to the lack of a substantial question for review.

Because Mallen did not make a timely motion to withdraw his plea below, he is precluded from challenging his plea on appeal. See Utah Code Ann. § 77-13-6 (2003); State v. Reyes, 2002 UT 13, ¶3, 40 P.3d 630. Section 77-13-6 provides that a defendant may move to withdraw a guilty plea only up to the time of sentencing. See Utah Code Ann. § 77-13-6(2)(b). The failure to timely move to withdraw a plea pursuant to section 77-13-6 "extinguishes a defendant's right to challenge the validity of the guilty plea on appeal." Reyes, 2002 UT 13 at ¶3.

This court lacks jurisdiction to address plea issues on appeal absent a timely motion to withdraw the plea. See id. As a result, this court cannot address Mallen's challenge to his guilty plea. Further, he raises no other issue for review. With

no substantial issue for review, Mallen's conviction is summarily affirmed.

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge

William A. Thorne Jr., Judge