

IN THE UTAH COURT OF APPEALS

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|--------------------------|---|--|----------------|
| State of Utah,           | ) | MEMORANDUM DECISION  |                |
|                          | ) | (Not For Official Publication)                             |                |
| Plaintiff and Appellee,  | ) |  |                |
|                          | ) | Case No. 20070952-CA                                       |                |
| v.                       | ) |  |                |
|                          | ) | F I L E D  |                |
| Stacey Marie Nielsen,    | ) | (January 15, 2009)   |                |
|                          | ) |  |                |
| Defendant and Appellant. | ) | <table border="1"><tr><td>2009 UT App 13</td></tr></table> | 2009 UT App 13 |
| 2009 UT App 13           |   |  |                |

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Second District, Ogden Department, 061901672  
The Honorable W. Brent West

Attorneys: Dee W. Smith, Ogden, for Appellant  
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake  
City, for Appellee

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Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

Stacey Marie Nielsen appeals from her convictions for various crimes, including possession of a controlled substance. Nielsen argues that the district court erred by failing to rule on her pro se motion to suppress. We affirm.

Nielsen asserts that the district court failed to grant her a hearing after she filed a pro se motion to suppress evidence found during a search of her purse. This court has recently explained that

a criminal defendant may either file pro se motions if he or she has opted for self representation, or file motions through counsel if represented. "When a defendant is represented by counsel, he generally has no authority to file pro se motions, and the court should not consider them." The defendant may choose self-representation or the assistance of counsel, but is not entitled to a "hybrid representation" where he could both enjoy the assistance of counsel and file pro se motions. The only exception to this rule is that a defendant may file a pro se motion to disqualify his appointed counsel.

State v. Wareham, 2006 UT App 327, ¶ 33, 143 P.3d 302 (citations omitted). At the time Nielsen filed her motion to suppress, she was represented by counsel. Because Nielsen was represented by counsel, she was required "to either file motions through [her] counsel or seek to dismiss [her] counsel and proceed pro se." Id. ¶ 32. Accordingly, because Nielsen filed her pro se motion while she was represented by counsel, the district court did not err in refusing to schedule a hearing on the pro se motion.

Further, Nielsen waived the claims included in her pro se motion to suppress by failing to file a notice to submit or to otherwise bring the motion to the attention of the court. When a trial court has failed to act on a motion, rule 12 of the Utah Rules of Criminal Procedure requires a party to bring the motion to the attention of the court, usually through a notice to submit. See Utah R. Crim. P. 12(b). More particularly, rule 12 states:

If neither party has advised the court of the filing nor requested a hearing, when the time for filing a response to a motion and the reply has passed, either party may file a request to submit the motion for decision. . . . If no party files a written Request to Submit, or the motion is not otherwise brought to the attention of the court, the motion will not be considered submitted for decision.

Id. Thus, the onus was on Nielsen to bring her motion to the attention of the court and request resolution of the motion. Because she failed to do so she waived the opportunity to have the motion considered for decision.

Affirmed.

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Pamela T. Greenwood,  
Presiding Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge