

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20041096-CA
v.)	
)	F I L E D
Richard Warren Pearson,)	(October 27, 2005)
)	
Defendant and Appellant.)	2005 UT App 461

Third District, Salt Lake Department, 031906848
The Honorable J. Dennis Frederick

Attorneys: Peter D. Goodall, Salt Lake City, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Richard Warren Pearson appeals the trial court's denial of his motion for a restitution hearing. We affirm.

Pearson pleaded guilty to five second degree felonies stemming from his misappropriation of money in his position as an accountant for the Department of Alcoholic Beverage Control. He was sentenced in February 2004, after a presentence report had been prepared. As part of his sentence, the trial court ordered Pearson to pay approximately \$131,000.00 in restitution. Pearson did not object to the imposition or the amount of restitution at sentencing. The trial court did, however, leave open the possibility that the amount could be altered as a result of negotiations or, if negotiations failed, a hearing. Absent any further action, however, the amount would stand as ordered.

In July 2004, Pearson's trial counsel moved to withdraw, stating as the basis for the motion that all legal services had been completed. In September, new counsel entered an appearance. In the same single-paragraph document, new counsel also requested a restitution hearing and discovery. No memorandum was filed presenting any specific grounds for the motion.

The trial court heard argument on the motion for a hearing in November 2004. New counsel argued only that the statute providing for requests for restitution hearings did not limit the time for such a request to no later than sentencing. The applicable statute provides that if a defendant "objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow the defendant a full hearing on the issue." Utah Code Ann. § 77-38a-302(4) (2003).¹ The trial court denied the request as untimely.

On appeal, Pearson asserts that the trial court erred in failing to provide its reasons for the restitution amount on the record, and by denying the motion for a restitution hearing because the trial court noted at sentencing that a hearing could be held at a later date. Neither of these issues are properly before this court.

The trial court set restitution in its sentencing order in February 2004. The trial court noted that the restitution amount came from the presentence report, but provided no further rationale. Pearson did not appeal this order, object to the lack of findings, or file a request to amend the judgment. He did not even challenge the lack of findings when he requested a restitution hearing, the actual subject of this appeal.

The order appealed in this case is the order denying Pearson's request for a hearing. The restitution amount was set in the sentencing order. Pearson cannot challenge the sentencing order at this time because he failed to timely appeal that order. See Utah R. App. P. 4(a) (providing notice of appeal must be filed within thirty days of order appealed). This court lacks jurisdiction over appeals that are not timely filed. See State v. Bowers, 2002 UT 100, ¶5, 57 P.3d 1065. As a result, this court lacks jurisdiction to consider the adequacy of the findings supporting the restitution amount.

Further, Pearson's argument that, at sentencing, the trial court offered a restitution hearing at a later date is waived because it was not raised before the trial court in the motion for a hearing. This court generally will not address issues raised for the first time on appeal. See State v. Dean, 2004 UT 63, ¶13, 95 P.3d 276. An issue must be sufficiently raised to a level of consciousness before the trial court to give the trial court the opportunity to address the issue. See id. The grounds for Pearson's motion for a hearing identified in the trial court

¹This section was in effect during the course of these proceedings, although it has been modified effective May 2005. See Utah Code Ann. § 77-38a-302(4) (Supp. 2005).

were limited to a statutory interpretation permitting a request seven months after sentencing. Pearson did not assert that he was entitled to a hearing based on the trial court's own instructions at sentencing. Because Pearson failed to raise the issue below, he failed to preserve the issue for appeal. See id. at ¶14 (noting argument not preserved where defendant failed to specifically raise the argument before the trial court). Thus, we decline to address the issue further.

In sum, neither issue identified by Pearson on appeal is properly before this court. Accordingly, the trial court's denial of Pearson's request for a restitution hearing is affirmed.

James Z. Davis, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge