

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060896-CA
v.)	
)	F I L E D
Ricardo Canchola-Rodriguez,)	(December 7, 2006)
)	
Defendant and Appellant.)	2006 UT App 481

Second District, Farmington Department, 051701664
The Honorable Darwin C. Hansen

Attorneys: Joseph Jardine, Salt Lake City, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Bench, Billings, and Thorne.

PER CURIAM:

Ricardo Canchola-Rodriguez appeals from his convictions on three felony charges after pleading guilty. This is before the court on its own motion for summary disposition based on lack of a substantial question for review and on Canchola-Rodriguez's motion for remand pursuant to Utah Rule of Appellate Procedure 23B.

Although Canchola-Rodriguez pleaded guilty and seeks to attack those pleas on appeal, albeit on a theory of ineffective assistance of counsel, he did not file a motion to withdraw his pleas in the district court. His failure to timely file a motion to withdraw his pleas bars this court from considering his challenge to the validity of his pleas 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 entering the plea agreement. See State v. Briggs, 2006 UT App 448, ¶6. Because Canchola-Rodriguez failed to timely move to withdraw his guilty pleas, this court lacks jurisdiction to consider his claim that he received ineffective assistance of counsel in connection with his pleas. He 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, Canchola-Rodriguez's motion for remand is denied as moot.

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge

William A. Thorne Jr., Judge