

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20100737-CA	
v.)		
)	F I L E D	
Vickers Waugh,)	(November 4, 2010)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2010 UT App 310</td></tr></table>	2010 UT App 310
2010 UT App 310			

Second District, Farmington Department, 091700317
The Honorable David M. Connors

Attorneys: Hakeem Ishola, West Valley City, for Appellant
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake
City, for Appellee

Before Judges Orme, Roth, and Christiansen.

PER CURIAM:

Vickers Waugh appeals the trial court's order denying his motion to withdraw his guilty plea. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review.

Pursuant to Utah Code section 77-13-6(2)(b), a motion to withdraw a guilty plea must be made prior to sentencing. See Utah Code Ann. § 77-13-6(2)(b) (2008). The time requirement is jurisdictional. See State v. Merrill, 2005 UT 34, ¶ 20, 114 P.3d 585. Any challenge to a guilty plea after sentencing must be pursued under the Post-Conviction Remedies Act, see Utah Code Ann. §§ 78B-9-101 to -405 (2008 & Supp. 2010), and rule 65C of the Utah Rules of Civil Procedure. See Utah Code Ann. § 77-13-6(2)(c).

Waugh was sentenced in December 2009. He did not file his motion to withdraw his plea until April 2010. Accordingly, his motion is untimely under section 77-13-6(2)(b). The trial court properly denied the motion as untimely and, therefore, beyond the jurisdiction of the trial court.

Waugh concedes his motion is untimely but argues that Padilla v. Kentucky, 130 S. Ct. 1473 (2010), mandates that non-citizens be able to challenge guilty pleas under flexible procedures. Padilla imposes a duty on counsel to advise clients regarding immigration consequences of guilty pleas, see id. at 1482-83, but it does not require new procedures or displace state jurisdictional requirements. Padilla's scope is not as broad as Waugh asserts, and it does not apply here.

Affirmed.

Gregory K. Orme, Judge

Stephen L. Roth, Judge

Michele M. Christiansen, Judge