

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR 11-53

ORVILLE DEWAYNE KELLEY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered JANUARY 11, 2012

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT,
[NO. CR-10-881]

HONORABLE CHARLES E.
CLAWSON, JR., JUDGE

DISMISSED; MOTION GRANTED

JOHN B. ROBBINS, Judge

Appellant Orville DeWayne Kelley entered a negotiated guilty plea to possession of drug paraphernalia with intent to manufacture methamphetamine, a Class B felony. The trial court accepted the guilty plea and entered a judgment and commitment order sentencing Mr. Kelley to five years in prison. Mr. Kelley filed a *pro se* notice of appeal, and his counsel has filed with this court a motion to withdraw and accompanying brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(k)(1) of the Arkansas Supreme Court Rules. Mr. Kelley exercised his right to file *pro se* points for reversal. Because Mr. Kelley has no right to appeal from his guilty plea, we lack jurisdiction and dismiss the appeal.

On the day of the plea hearing, Mr. Kelley's written guilty-plea statement was filed in court. The statement reflected a plea of guilty and a recommendation of a five-year prison



sentence, and was signed by Mr. Kelley, his counsel, and the prosecutor. The statement fully explained the rights that Mr. Kelley was waiving by pleading guilty.

Upon questioning by the trial court at the hearing, Mr. Kelley made the following representations:

I have completed my GED. I read and understand the English language. I am not under the influence of any drugs or alcohol or any substance that would affect my judgment today. I have never been diagnosed with any sort of mental condition that would impair my ability to understand these proceedings. No one has threatened me, coerced me, intimidated me, or done anything to make me come in here today and change my plea. I have been represented in this matter by Mr. Faulkner. I have had a chance to talk with him about the charges pending against me. He has answered all of my questions, and I am satisfied that I understand his answers. I understand that Mr. Faulkner has given you a document entitled "Guilty Plea Statement," and that is my signature on the last page. My signature indicates that I have gone through that document with my attorney, and I understand that this is a listing of the rights that I am giving up or waiving by coming in here today and changing my plea.

Mr. Kelley stated that he was planning to manufacture methamphetamine, and that he was pleading guilty because he was in fact guilty. The trial court found that Mr. Kelley freely and voluntarily entered the guilty plea, and stated that it would accept the recommendation of a five-year prison term.

In his pro se points Mr. Kelley does not challenge his conviction or five-year prison sentence. His only argument is that he agreed to plead guilty to a Class C felony and not a Class B felony, an argument which is wholly unsupported by the record.

In Mr. Kelley's counsel's no-merit brief, his counsel accurately explains that Mr. Kelley has no right to appeal from his guilty plea. Arkansas Rule of Appellate Procedure—Criminal 1(a) provides that, except as provided by Ark. R. Crim. P. 24.3(b),



there shall be no appeal from a plea of guilty.¹ Our supreme court has recognized two other exceptions to this general rule: (1) when there is a challenge to testimony or evidence presented before a jury in a sentencing hearing separate from the plea itself; and (2) when the appeal is the appeal of a posttrial motion challenging the validity and the legality of the sentence itself.² *Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004). In *Johnson v. State*, 2010 Ark. 63, the supreme court held that there is an exception to the general rule when the appeal alleges evidentiary errors that arose after the plea and during the sentencing phase, regardless of whether a jury was empaneled for that phase of the trial.

In this case, none of the exceptions to the general rule that there shall be no appeal from a guilty plea are applicable. For that reason, we dismiss Mr. Kelley's appeal. Mr. Kelley's counsel's motion to be relieved is granted.

Appeal dismissed; motion granted.

HART and ABRAMSON, JJ., agree.

Caroline L. Winningham, for appellant.

Dustin McDaniel, Att'y Gen., by: *Rebecca B. Kane*, Ass't Att'y Gen., for appellee.

¹Rule 24.3(b) permits review of conditional guilty pleas with respect to adverse rulings on motions to suppress illegally obtained evidence, as well as adverse rulings on motions to dismiss on speedy-trial grounds. Mr. Kelley did not enter a conditional plea, so this rule is inapplicable in this case.

²There were no posttrial motions filed in this case.