

ARKANSAS COURT OF APPEALS

DIVISION I

No. CACR09-1325

MAXWELL MELDER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 5, 2010

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[CR-2009-166]

HONORABLE PHILLIP T.
WHITEAKER, JUDGE

APPEAL DISMISSED

DAVID M. GLOVER, Judge

Appellant, Maxwell Melder, pleaded nolo contendere to the offense of distributing/possessing or viewing matter depicting sexually explicit conduct involving a child, a Class C felony. He was sentenced by the trial court to five years in prison, with two of those years suspended, which is within the three- to ten-year sentencing range for a Class C felony. *See* Ark. Code Ann. § 5-4-401(a)(4) (Repl. 2006). On appeal, Melder argues that the trial court erred in sentencing him to prison because the trial court's reason for departure from the sentencing grid, which recommended alternative sanctions, was arbitrary. For the reasons stated below, we dismiss Melder's appeal.

Rule 1(a) of the Arkansas Rules of Appellate Procedure—Criminal provides in pertinent part, “Except as provided by ARCrP 24.3(b) there shall be no appeal from a plea of guilty or nolo contendere.” Rule 24.3(b) of the Arkansas Rules of Criminal Procedure states:

With the approval of the court and the consent of the prosecuting attorney, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of an adverse determination of a pretrial motion to suppress seized evidence or a custodial statement. If the defendant prevails on appeal, the defendant shall be allowed to withdraw the conditional plea.

Since Melder’s plea was not conditional under Rule 24.3(b), the exceptions found in that rule do not apply.

Our supreme court has carved two other exceptions for appeals, holding that an appeal may be taken after a guilty plea when the issue on appeal is one of evidentiary errors that arose after the plea but during the sentencing phase of the trial, regardless of whether a jury was impaneled or the trial judge sat as the trier of fact during that phase, *Johnson v. State*, 2010 Ark. 63, and from postjudgment motions to amend an incorrect or illegal sentence following a guilty plea, *Reeves v. State*, 339 Ark. 304, 5 S.W.3d 41 (1999). But neither of these exceptions apply to Melder’s situation. Because Melder’s case does not fit into any of the above exceptions for appeals after a plea of guilty, we dismiss his appeal.

Appeal dismissed.

VAUGHT, C.J., and GRUBER, J., agree.