

Linda STREET *v.* STATE of Arkansas

CR 98-74

975 S.W.2d 827

Supreme Court of Arkansas
Opinion delivered October 8, 1998

[Petition for rehearing denied November 12, 1998.]

APPEAL & ERROR — NO APPEAL FROM *NOLO CONTENDERE* PLEA — EXCEPTION TO APPELLATE RULE NOT APPLICABLE — APPEAL DISMISSED. — The only exception to Ark. R. App. P.—Crim. 1, which states generally that there shall be no appeal from a plea of guilty or *nolo contendere*, is found in Ark. R. Crim. P. 24.3(b), which provides, subject to court approval and prosecutorial consent, for a conditional plea of guilty or *nolo contendere* with a written reservation of the right, on appeal from the judgment, to review of an adverse determination of a pretrial motion to suppress evidence; holding that the exception did not apply in this case, where appellant had entered a plea of *nolo contendere*, the supreme court dismissed the appeal.

Appeal from Jackson Circuit Court; *Harold S. Erwin*, Judge; appeal dismissed.

Alvin Schay, for appellant.

Winston Bryant, Att’y Gen., by: *Mac Golden*, Ass’t Att’y Gen., for appellee.

W.H. “DUB” ARNOLD, Chief Justice. The appellant, Linda Street, entered a plea of *nolo contendere* in Jackson County, Arkansas, Circuit Court to the following charges: possession of methamphetamine with intent to deliver (a Class Y felony, carrying a possible sentence of ten years to forty years or life in the Arkansas Department of Correction and a fine of up to \$25,000); possession of marijuana with intent to deliver (a Class C felony, carrying a possible sentence of four years to ten years in the Arkansas Department of Correction, or a fine of up to \$25,000, or both); and possession of drug paraphernalia (a Class C felony, carrying a possible sentence of three years to ten years in the Arkansas Department of Correction, or a fine of up to \$10,000, or both). See Ark.

Code Ann. §§ 5-4-401(a)(4), 5-64-401(a)(1)(I), (iv), and 5-64-403(c)(1) (Repl. 1998). The trial court sentenced appellant to thirty years, five years, and five years, respectively on each count, for a total of forty years in the Arkansas Department of Correction. Appellant contends for her only point on appeal that the trial court committed reversible error by not disqualifying itself because of “agitation” with defense counsel’s actions, resulting in an excessive sentence for appellant.

Rule 1(a) of the Arkansas Rules of Appellate Procedure—Criminal provides that

[a]ny person convicted of a misdemeanor or a felony by virtue of trial in any circuit court of this state has the right to appeal to the Arkansas Court of Appeals or to the Supreme Court of Arkansas. An appeal may be taken jointly by codefendants or by any defendant jointly charged and convicted with another defendant, and only one (1) appeal need be taken where a defendant has been found guilty of one (1) or more charges at a single trial. *Except as provided by ARCrP 24.3(b) there shall be no appeal from a plea of guilty or nolo contendere.* [Emphasis added.]

[1] The only exception to Rule 1 of the Arkansas Rules of Appellate Procedure is found in Arkansas Rule of Criminal Procedure 24.3(b), which provides that

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

That exception does not apply in this case.

Appeal dismissed.