

Cite as 2012 Ark. 424

SUPREME COURT OF ARKANSAS

No. CR 12-884

KELLY A. OWENS

PETITIONER

V.

STATE OF ARKANSAS

RESPONDENT

Opinion Delivered November 8, 2012

PRO SE MOTION FOR BELATED
APPEAL [BENTON COUNTY CIRCUIT
COURT, NO. CR 11-866, HON. JON B.
COMSTOCK, JUDGE]

MOTION DENIED.

PER CURIAM

On May 3, 2012, judgment was entered reflecting that petitioner Kelly A. Owens had entered a plea of guilty to three felony offenses. She was sentenced to 120 months' imprisonment on one count, with imposition of additional 120-month sentences suspended for the other two convictions.

On October 15, 2012, petitioner filed the motion that is now before us, seeking leave to proceed with a belated appeal of the judgment of conviction. As grounds for relief, petitioner contends that she was misled and deceived into accepting a plea agreement, in that she was unaware of the amount of time that she would be required to serve before becoming eligible for parole.

Arkansas Rule of Appellate Procedure–Criminal 1(a) (2012) provides that there is no direct appeal from a plea of guilty. An exception is created when a conditional plea of guilty is premised on an appeal of the denial of a suppression motion pursuant to Arkansas Rule of Criminal Procedure 24.3 (2012). *See Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004). Two

additional exceptions to the general rule, as set out in *Seibs* and *Grissom v. State*, 2009 Ark. 328 (per curiam), are (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 from a posttrial motion challenging the validity and legality of the sentence itself. *See Nelson v. State*, 2012 Ark. 217 (per curiam); *see also Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003). Absent one of the exceptions, a defendant waives his right to appeal when he pleads guilty. *Smith v. State*, 2011 Ark. 54 (per curiam); *Grissom*, 2009 Ark. 328; *see also Berry v. City of Fayetteville*, 354 Ark. 470, 125 S.W.3d 171 (2003); *Barnett v. State*, 336 Ark. 165, 984 S.W.2d 444 (1999). We have held, however, that an appeal may be taken after a guilty plea when the petitioner alleges evidentiary errors which arose after the plea and during the sentencing phase, regardless of whether a jury was impaneled for that phase of trial. *See Tubbs v. State*, 2011 Ark. 166 (per curiam); *see also Johnson v. State*, 2010 Ark. 63.

Petitioner here does not contend that her plea was conditional or that it otherwise met any of the exceptions that would allow for an appeal from the judgment. For that reason, she has not met her burden of establishing that she is entitled to proceed with a belated appeal. *See Nelson*, 2012 Ark. 217; *see also Smith*, 2011 Ark. 54.

Motion denied.

Kelly A. Owens, pro se appellant.

No response.