

Cite as 2011 Ark. 54  
**SUPREME COURT OF ARKANSAS**  
No. CR-09-783

Opinion Delivered February 9, 2011

VICTOR JERMAINE SMITH  
PETITIONER

V.

STATE OF ARKANSAS  
RESPONDENT

PRO SE MOTION FOR BELATED  
APPEAL OF JUDGMENT OF  
CONVICTION [FAULKNER COUNTY  
CIRCUIT COURT, NO. CR 2008-658]

MOTION DENIED.

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**PER CURIAM**

On January 29, 2009, judgment was entered reflecting that petitioner Victor Jermaine Smith had entered a plea of guilty to kidnapping, aggravated robbery, and theft of property. He was sentenced to an aggregate term of 300 months' imprisonment. Petitioner now asks this court to permit him to proceed with a belated appeal of the judgment.

Arkansas Rule of Appellate Procedure –Criminal 1(a) (2010) 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 (2010). *Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004); *see also Davis v. State*, 2010 Ark. 393 (per curiam). Two other 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 *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. *Davis*, 2010 Ark. 393; *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).

Here, petitioner states only that he desires to “appeal his plea agreement.” He does not contend, and the partial record he submitted with the motion does not reflect, that his plea of guilty was conditional or that it fit within one of the above exceptions. Petitioner offers nothing in the motion to establish that the judgment was one that could be appealed. As a result, petitioner has demonstrated no right to an appeal from the judgment.

Motion denied.