

SUPREME COURT OF ARKANSAS

No. CR08-1477

MATTHEW COLE HAGEN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered February 4, 2010

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT,
[NO. CV2006-582IV]

HON. MARCIA RENAUD
HEARNSBERGER, JUDGE,

CERTIFIED QUESTION ANSWERED;
REMANDED TO COURT OF
APPEALS.

PAUL E. DANIELSON, Associate Justice

The court of appeals certified this criminal case to us pursuant to Arkansas Supreme Court Rule 1-2(b)(1) and (6) (2009) as an issue of first impression involving the interpretation of a rule of criminal procedure. The question certified to us is whether an oral motion to withdraw a guilty plea made prior to the entry of judgment is sufficient under Rule 26.1 of the Arkansas Rules of Criminal Procedure. We hold that it is, and we remand the case to the court of appeals for a determination on the merits of Hagen’s appeal.

On May 20, 2008, appellant Matthew Cole Hagen pled guilty to a reduced charge of domestic battery in the third degree, a class A misdemeanor. The State had initially charged Hagen with second-degree battery, a class D felony. The circuit court accepted his plea and



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announced his sentence of a one-year probation and a fine of \$500. Later the same day, Hagen again appeared before the court without his counsel and orally moved to withdraw his plea, alleging that his attorney had coerced him into pleading guilty. The court instructed that Hagen would “have to file proper papers in order to do that.”

The circuit court filed the judgment and disposition order on May 23, 2008. On May 27, 2008, Hagen, acting pro se, filed a written motion to withdraw his plea. After a hearing, the circuit court denied Hagen’s motion to withdraw, stating two reasons. First, the circuit court did not believe it had jurisdiction to entertain the motion, as the oral motion was not made until after the court announced the sentence from the bench, which the court believed was the entry of judgment. Additionally, the circuit court found that Hagen failed to provide convincing evidence that he was denied effective assistance of counsel. The order denying the motion was entered on September 9, 2008. It is from that order and the order of judgment that Hagen appeals.

Rule 26.1 provides, in relevant part, as follows:

- (a) A defendant may withdraw his or her plea of guilty or nolo contendere as a matter of right before it has been accepted by the court. A defendant may not withdraw his or her plea of guilty or nolo contendere as a matter of right after it has been accepted by the court; however, before entry of judgment, the court in its discretion may allow the defendant to withdraw his or her plea to correct a manifest injustice if it is fair and just to do so, giving due consideration to the reasons advanced by the defendant in support of his or her motion and any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant’s plea. A plea of guilty or nolo contendere may not be withdrawn under this rule after entry of judgment.
- (b) Withdrawal of a plea of guilty or nolo contendere shall be deemed to be



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necessary to correct a manifest injustice if the defendant proves to the satisfaction of the court that:

- (i) he or she was denied the effective assistance of counsel;
- (ii) the plea was not entered or ratified by the defendant or a person authorized to do so in his or her behalf;
- (iii) the plea was involuntary, or was entered without knowledge of the nature of the charge or that the sentence imposed could be imposed.

Ark. R. Crim. P. 26.1 (2008). After a plea has been accepted by the court, a petitioner may proceed under this rule and the circuit court has the discretion to allow the plea to be withdrawn only before the entry of judgment. While the circuit court believed that the entry of judgment occurred when the court announced Hagen's sentence in open court, this court has held that a motion to withdraw filed after the oral pronouncement of sentence but before the entry of the judgment and commitment order was timely. See *Johninson v. State*, 330 Ark. 381, 953 S.W.2d 883 (1997). Judgment and commitment orders are effective upon entry of record. See *Bradford v. State*, 351 Ark. 394, 94 S.W.3d 904 (2003). Therefore a motion to withdraw a plea was timely in the instant case if made before May 23, 2008.

Hagen orally moved the court to withdraw his plea on May 20, 2008. However, rather than ruling, the circuit court instructed that Hagen would have to file "proper papers" to make that motion and then entered the judgment on May 23, 2008. Hagen subsequently filed a written motion to withdraw; however, because the judgment had been entered, the circuit court no longer had jurisdiction to grant his motion pursuant to Rule 26.1. The circuit court then denied the motion to withdraw, erroneously believing that the court had



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lost jurisdiction to entertain the motion after the sentence was announced from the bench.

While this court has never specifically held that an oral motion to withdraw a plea is sufficient under Rule 26.1, prior decisions have implied that an oral motion is acceptable. *See, e.g., Malone v. State*, 294 Ark. 376, 742 S.W.2d 945 (1988) (affirming the circuit court's denial of the appellants' belated request for withdrawal of their pleas because nothing in the record supported their claim that they had made an oral motion to withdraw their pleas prior to sentencing); *Williams v. State*, 272 Ark. 207, 613 S.W.2d 94 (1981) (holding that the circuit court erred in refusing to allow the defendant to withdraw his plea after he moved to do so at a sentencing hearing). Therefore, we hold that Hagen's oral motion to withdraw his plea was sufficient under Rule 26.1. The circuit court erred by requiring a written motion and then entering judgment before allowing Hagen a reasonable amount of time to comply. Given the specific facts of this case, we hold that the entry of judgment was, in effect, a denial of Hagen's timely, oral motion to withdraw his plea. Therefore, we remand the case to the court of appeals for a determination on the merits of whether the circuit court abused its discretion in denying the motion to withdraw.

Certified question answered; remanded to the court of appeals.