

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38348

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 599
	)	
Plaintiff-Respondent,	)	Filed: August 30, 2011
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
ALEXANDER JASON WOODLEY,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Darren B. Simpson, District Judge.

Order denying motion to withdraw guilty plea, affirmed.

Alexander Jason Woodley, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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LANSING, Judge

Alexander Jason Woodley appeals from the district court's denial of his motion to withdraw his guilty plea. We conclude that the district court correctly determined that it lacked jurisdiction to hear Woodley's motion.

I.

**BACKGROUND**

Woodley was charged with felony operating a motor vehicle while under the influence of alcohol, having had two convictions in the previous ten years, Idaho Code Sections 18-8004 and 18-8005(5). On April 9, 2007, the parties filed a plea agreement that was signed by Woodley, his attorney, and the prosecutor. In it, Woodley agreed to plead guilty in exchange for the State's recommendation that he be granted a withheld judgment and placed on probation. The plea agreement specified that Woodley would be entitled to withdraw his plea if the court did not adopt the recommended sentence. The court accepted the plea and set the matter for sentencing.

On May 21, 2007, the court imposed a unified seven-year sentence, with four years fixed, instead of withholding judgment. The court suspended the sentence, however, and placed Woodley on probation for five years. Woodley did not then move to withdraw his plea; he accepted probation on the specified terms. On July 2, 2007, Woodley filed a notice of appeal, which was subsequently dismissed for failure to pay the necessary fees. The remittitur from that appeal was issued on November 14, 2007.

On February 1, 2008, after a series of probation violations, the district court revoked Woodley's probation but retained jurisdiction for 180 days pursuant to Idaho Code Section 19-2601(4). Woodley filed a pro se appeal on March 5, 2008, challenging the revocation of his probation. This Court affirmed the revocation in an unpublished decision issued June 26, 2009. On April 11, 2008, while that appeal was pending, Woodley filed a motion to withdraw his guilty plea. On September 4, 2008, the district court issued an order denying Woodley's request for withdrawal of the plea on the ground that the court lacked jurisdiction to entertain the motion.<sup>1</sup> Woodley now appeals the denial of his motion to withdraw his guilty plea.

## II.

### ANALYSIS

Before considering the merits of Woodley's arguments for withdrawal of his guilty plea, we must first determine whether the district court was correct in holding that it lacked jurisdiction to hear Woodley's motion. Whether a court possesses jurisdiction is a question of law over which we exercise free review. *In re Hanson*, 121 Idaho 507, 509, 826 P.2d 468, 470 (1992); *Weller v. State*, 146 Idaho 652, 653, 200 P.3d 1201, 1202 (Ct. App. 2008). "Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal." *State v. Jakoski*, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003). In *Jakoski*, 139 Idaho at 355, 79 P.3d at 714, the Idaho Supreme Court specifically noted that Rule 33(c) of the Idaho Criminal Rules, which governs withdrawal of guilty pleas, "does not

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<sup>1</sup> The court reissued the order on November 10, 2010, as a remedy for Woodley's successful petition for post-conviction relief on a claim of ineffective assistance of counsel. The reissuance of the order allowed Woodley to bring the current timely appeal.

include any provision extending the jurisdiction of the trial court for the purpose of hearing a motion to withdraw a guilty plea.”

Woodley’s judgment of conviction became final on November 14, 2007, when our Supreme Court issued a remittitur on his appeal from the judgment. Under the holding of *Jakoski*, the district court’s jurisdiction to hear a motion from Woodley to withdraw his guilty plea expired at that point. The fact that the court placed Woodley on probation when entering the judgment of conviction did not alter the finality of that judgment. See *State v. Jensen*, 138 Idaho 941, 944, 71 P.3d 1088, 1091 (Ct. App. 2003) (holding a probationary period does not extend the time for appeal from a judgment of conviction and sentence); *State v. Fox*, 122 Idaho 550, 551, 835 P.2d 1359, 1360 (Ct. App. 1992) (holding the appeal period from a judgment does not stop running merely because the defendant is placed on probation); *State v. Tucker*, 103 Idaho 885, 888, 655 P.2d 92, 95 (Ct. App. 1982) (placing defendant on probation did not affect the finality of the judgment of conviction and sentence and, where defendant did not appeal until after revocation of probation, Court of Appeals lacked jurisdiction to entertain challenge to original sentence).

Woodley’s plea agreement, which specified no time limit within which Woodley could withdraw his plea, did not confer an infinite period of time to file such a motion. Parties cannot extend the subject matter jurisdiction of the court by stipulation. *Fairway Dev. Co. v. Bannock County*, 119 Idaho 121, 125, 804 P.2d 294, 298 (1990). Thus, if Woodley wished to make a motion to withdraw his plea, he was required to do so before the court’s jurisdiction expired. Because Woodley waited to file his motion to withdraw his guilty plea until April 11, 2008, nearly six months after the judgment became final, the court no longer had jurisdiction to hear the motion.

Woodley argues that the court should have liberally construed his motion as a post-conviction petition and found jurisdiction under the Uniform Post-Conviction Procedure Act (UPCPA), I.C. § 19-4901, *et seq.* The Idaho Supreme Court rejected a similar argument in *Jakoski*, 139 Idaho at 355, 79 P.3d at 714. Confronted there with an untimely motion to withdraw a guilty plea, the Court reasoned that because post-conviction actions are civil in nature, “[i]t would be too much of a stretch to hold that a motion filed in a criminal case can be considered as a pleading commencing civil litigation.” *Id.* Thus, the district court was correct in not construing Woodley’s motion as a petition for post-conviction relief.

Because we conclude the district court lacked jurisdiction to hear Woodley's motion to withdraw his plea, we do not reach the other issues presented in Woodley's appeal.

**III.**

**CONCLUSION**

The district court's order denying Woodley's motion to withdraw his guilty plea on the ground of lack of jurisdiction is affirmed.

Judge GUTIERREZ and Judge MELANSON **CONCUR.**