

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2017

JOHN LESLIE CHAPMAN,

**Appellant
(Defendant),**

v.

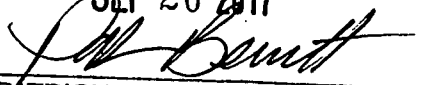
THE STATE OF WYOMING,

**Appellee
(Plaintiff).**

S-17-0231

IN THE SUPREME COURT
STATE OF WYOMING
FILED

SEP 26 2017


PATRICIA BENNETT, CLERK

ORDER DISMISSING APPEAL

This matter came before the Court upon its own motion following a review of recently docketed appeals. Appellant took this appeal to challenge the district court's "Order Denying Petition for Relief from a Void Judgment and to Vacate and Set Aside the Judgment and Sentence." After a careful review of this Court's file, this Court concludes that it is without jurisdiction to entertain this appeal. In reaching that conclusion, the Court finds and rules as follows:

1. Appellant's convictions and appeals to this Court are well-documented. In 2010, Appellant entered an unconditional guilty plea to attempted second degree murder. He later moved to withdraw his guilty plea, but the district court denied his motion. He took an appeal, and this Court affirmed. *Chapman v. State*, 2013 WY 57, 300 P.3d 864 (Wyo. 2013).
2. Appellant later filed a motion for sentence reduction, pursuant to W.R.Cr.P. 35(b). The denial of that motion was affirmed by this Court in *Chapman v. State*, 2015 WY 15, 342 P.3d 388 (Wyo. 2015).
3. Appellant also filed two petitions for post-conviction relief, pursuant to Wyo. Stat. Ann. § 7-14-101 *et seq.* Those petitions were denied, and this Court declined to review those denials. Supreme Court Dockets S-13-0264; S-15-0291. In his second such petition, Appellant raised, for the first time, his claim that his conviction should be vacated because he was not provided the firearms advisement required by Wyo. Stat. Ann. § 7-11-507. *See* Wyo. Stat. Ann. § 7-14-103(a)(ii) ("A claim under this act is procedurally barred and no court has jurisdiction to decide the claim if the claim:

. . . Was not raised in the original or an amendment to the original petition under this act.”); Wyo. Stat. Ann. § 7-14-103(d).

4. The present matter began on March 7, 2017, when Appellant filed his “Petition for Relief from a Void Judgment and to Vacate and Set Aside the Judgment and Sentence.” Appellant claimed his judgment of conviction is void, because he was not provided the firearms advisement required by Wyo. Stat. Ann. § 7-11-507. He requested the district court set aside the judgment. On June 13, 2017, the district court entered its “Order Denying Petition for Relief from a Void Judgment and to Vacate and Set Aside the Judgment and Sentence.” The district court ruled the firearms advisement claim is barred by *res judicata* and waiver. The district court noted Appellant did not raise his firearms advisement claim in his motion to withdraw guilty plea, his first appeal, or his first petition for post-conviction relief. The district court also relied on *Lunden v. State*, 2013 WY 35, ¶ 12, 297 P.3d 121, 124 (Wyo. 2013), which provides: “The appellant had two opportunities to raise this [firearms advisement] claim before either the district court or this Court, yet did not do so. Thus, the claim is barred by *res judicata*.”
5. On June 21, 2017, Appellant filed a *pro se* notice of appeal to challenge the “Order Denying Petition for Relief from a Void Judgment and to Vacate and Set Aside the Judgment and Sentence.”
6. In *Nixon v. State*, 2002 WY 118, ¶ 9, 51 P.3d 851, 853–54 (Wyo. 2002), this Court discussed the limits on post-conviction relief, in the context of a post-judgment motion to withdraw guilty plea. This Court wrote:

Although this Rule [W.R.Cr.P. 32(d)] does not, in and of itself, set a time limit for filing such a motion with the district court after sentencing, such a limit must exist as a logical corollary to the general rule that a case becomes final after judgment and sentence is entered and an appellate decision affirming the conviction has been made, or the time for taking an appeal expires without perfection of an appeal, or after the voluntary dismissal of such an appeal. *See Schuler v. State*, 771 P.2d 1217, 1220 (Wyo. 1989) (citing *Attletweedt v. State*, 684 P.2d 812 (Wyo. 1984); *State v. Duswalt*, 153 N.J.Super. 399, 379 A.2d 1278 (1977)), for the proposition that a case is no longer pending after a final judgment (in Wyoming, that is the judgment and sentence) has been entered in the trial court. Unless a specific, express exception is created to this general rule by statute or court rule, a district court’s jurisdiction to consider a motion to withdraw a plea--or any other motion not specifically provided for by statute or rule--ends when the case becomes final because of the expiration of the time for taking an appeal. In sum, once a criminal case becomes final pursuant to the general rule, a trial court loses the power to act in that case unless it is expressly permitted to do so by statute or court rule.

(Emphasis omitted.) See also *Barela v. State*, 2002 WY 143, ¶¶ 8–9, 55 P.3d 11, 12–13 (Wyo. 2002); *Taylor v. State*, 2003 WY 97, ¶¶ 8–9, 74 P.3d 1236, 1239 (Wyo. 2003). In *Hitz v. State*, 2014 WY 58, ¶ 15, 323 P.3d 1104, 1106–7 (Wyo. 2014), this Court restated the general rule:

We have held:

Once a defendant's conviction is final because he has exercised his right to appeal, or the time for appeal has expired, the district court no longer has authority over the case. The district court only has jurisdiction to act if the case has been remanded or if a specific, express exception conferring jurisdiction is created by a rule or statute.

Kurtenbach, ¶ 11, 290 P.3d at 1104 (quoting *Neidlinger*, ¶ 9, 230 P.3d at 308); see also *Lee v. State*, 2007 WY 81, ¶ 6, 157 P.3d 947, 949 (Wyo. 2007); *Nixon*, ¶ 13, 51 P.3d at 854.

7. This Court has not located any statute or rule that authorizes the district court to consider Appellant's "Petition for Relief from a Void Judgment and to Vacate and Set Aside the Judgment and Sentence." Therefore, this Court concludes the district court was without jurisdiction to consider Appellant's petition.
8. This Court may exercise no more extensive jurisdiction than that enjoyed by the district court. Thus, this appeal should be dismissed for a lack of jurisdiction. *Barela*, ¶ 9, 55 P.3d at 13; *Nixon*, ¶ 17, ¶ 30, 51 P.3d at 855–56, 859 (Wyo. 2002).

IT IS, THEREFORE, ORDERED that the captioned appeal be, and the same hereby is, dismissed.

DATED this 26th day of September, 2017.

BY THE COURT:


for E. JAMES BURKE
Chief Justice

THE STATE OF WYOMING)
) ss.
COUNTY OF SWEETWATER)

IN THE DISTRICT COURT
THIRD JUDICIAL DISTRICT
CR-08-167-J

THE STATE OF WYOMING,)
)
Plaintiff,)
)
vs.)
)
JOHN LESLIE CHAPMAN,)
)
Defendant.)

ORDER DENYING PETITION FOR RELIEF FROM A VOID JUDGMENT AND TO VACATE
AND SET ASIDE THE JUDGMENT AND SENTENCE

This matter is before the Court on Defendant's Petition for Relief from a Void Judgment and to Vacate and Set Aside the Judgment and Sentence (Petition). The State has not filed a response to Defendant's Petition. A hearing would not materially aid the Court in resolving the issues and, accordingly, the matter has been taken under advisement without a hearing. The Court, having reviewed the Petition, case file, record on appeal, applicable rules and case law, and being otherwise fully advised, finds as follows:

1. As this Court noted in its December 3, 2015 Order Dismissing Petitioner's Second Petition for Post-Conviction Relief and its November 16, 2016 Order Denying Motion to Docket and Reinstate Appeal, Defendant failed to assert any claim regarding failure to give advisements pursuant to W.S. § 7-11-507 in his motion to withdraw his guilty plea, his direct appeal or his first petition for post-conviction relief. It is thus undisputed from the record that Defendant had numerous opportunities after sentencing to assert this claim prior to the time he actually asserted the same.

2. Conspicuously absent from the list of cases cited in Defendant's Petition is mention of the case *Lunden v. State*, 2013 WY 35, 297 P.3d 121 (Wyo. 2013). In that case, the defendant raised a claim based on failure to give advisements pursuant to W.S. § 7-11-507 as part of his appeal of the district court's denial of his motion to correct illegal sentence. *Id.*, at ¶ 5, 297 P.3d at 123. The Wyoming Supreme Court determined that even if the defendant had raised the issue in the district court, it was barred by the doctrine of *res judicata*. *Id.*, at ¶¶ 7-13, 297 P.3d at 123-124. The *Lunden* court stated: "The appellant had two opportunities to raise this claim before either the district court or [the Wyoming Supreme Court], yet did not do so. Thus, the claim is barred by *res judicata*." *Id.*, at ¶ 12, 297 P.3d at 124.

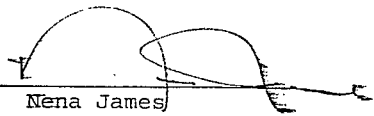
3. As in the *Lunden* case, Defendant is barred by the doctrines of *res judicata* and waiver from asserting this claim because he had several opportunities to raise the issue in this Court and before the Wyoming Supreme Court, and failed to do so.

4. The cases relied on by Defendant in his Petition are distinguishable from the case at bar because those defendants raised the issue at their earliest opportunity. See *Starrett v. State*, 2012 WY 133, 286 P.3d 1033 (Wyo. 2012) (issue raised on direct appeal); *McEwan v. State*, 2013 WY 155, 314 P.3d 1160 (Wyo. 2013) (issued raised on direct appeal); *Parks v. State*, 2014 WY 57, 325 P.3d 915 (Wyo. 2014) (issue raised on direct appeal).

5. Defendant has not presented this Court with any direct or indirect authority to support his argument that the Judgment and Sentence is void.

IT IS HEREBY ORDERED that Defendant's Petition for Relief from a Void Judgment and to Vacate and Set Aside the Judgment and Sentence is ~~denied~~.

Done this 15th day of June, 1917.



Nena James
District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**