

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Honorable Marvin H. Dukes, III, Acting Circuit Court Judge
Appellate Case No. 2024-000037

THE STATE,

Respondent,

vs.

CURTIS A. GREEN,

Appellant.

MOTION TO DISMISS APPEAL

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

On September 16, 2020, Appellant Curtis A. Green was arrested for driving under the influence (“DUI”) in Beaufort County, South Carolina and was issued a uniform traffic ticket for a violation of Section 56-5-2930(A) of the South Carolina Code of Laws. Prior to trial on that charge, Green moved in the Beaufort County Magistrate Court for dismissal based on a purported violation of the recording requirements set out in Section 56-5-2953. Following a hearing on the matter, the Honorable Richard A. Brooks, magistrate judge, issued an order dismissing Green’s charge. Subsequent to that, the State timely appealed the magistrate judge’s order to the Beaufort County Court of Common Pleas. Ultimately, on appeal, the Honorable Marvin H. Dukes, acting circuit court judge, issued an order: (1) vacating the magistrate judge’s

dismissal of Green’s DUI charge; and (2) remanding the matter to the Beaufort County Magistrate Court for further proceedings. On January 9, 2024, Green—who has not yet been tried or sentenced for his pending DUI charge—filed a notice of appeal challenging the circuit court judge’s order.

II.

In South Carolina, the right to appeal is conferred by S.C. Code Ann. § 14-3-330. State v. Miller, 289 S.C. 426, 426, 346 S.E.2d 705, 705 (1986). Ordinarily, an appeal may only be pursued after a party has obtained a final judgment or has otherwise satisfied the terms of Section 14-3-330. State v. Wilson, 387 S.C. 597, 599, 693 S.E.2d 923, 924 (2010); see Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (“An appeal ordinarily may be pursued only after a party has obtained a final judgment.”); Miller, 289 S.C. at 427, 346 S.E.2d at 706 (“In order to exercise his statutory right to appeal, a defendant must come within the terms of the applicable statute.”). In criminal cases, judgment for a criminal defendant is not final until a sentence is imposed following conviction. State v. Robinson, 287 S.C. 173, 174, 337 S.E.2d 204, 204 (1985); see Berman v. United States, 302 U.S. 211, 212 (1937) (“Final judgment in a criminal case means sentence. The sentence is the judgment.”). Thus, a criminal defendant may ordinarily *not* appeal until *after* a sentence has been imposed. Parsons v. State, 289 S.C. 542, 542, 347 S.E.2d 504, 504 (1986); see State v. Timmons, 68 S.C. 258, 259, 47 S.E. 140, 141 (1904) (“[A] defendant in a criminal case cannot appeal except from the final sentence imposed by the Court.”).

III.

In State v. Looper, 421 S.C. 384, 386, 807 S.E.2d 203, 204 (2017), our Supreme Court was confronted with the issue of whether a criminal defendant could immediately appeal a circuit

court order reversing a magistrate order that dismissed a DUI charge prior to conviction and sentencing. Upon considering the matter, the Supreme Court concluded a defendant cannot properly do so pursuant to South Carolina's appealability rules. Id. at 390, 807 S.E.2d at 206. In reaching such a conclusion, the Supreme Court instructed there was no final judgment in Looper's case because he had not yet been convicted or sentenced and, therefore, his appeal had to be dismissed as premature. Id.

IV.

In the case sub judice, Green—just like Looper before him—is appealing from a circuit court judge's order reversing a magistrate judge's earlier order dismissing a DUI charge. However, like Looper's case, Green's case has not yet gone to trial, and Green has not yet been convicted or sentenced on the DUI charge he moved to dismiss prior to trial. See Wilson, 387 S.C. at 603, 693 S.E.2d at 926 (recognizing the general rule is a criminal defendant cannot appeal until he has been convicted and sentenced). As a result, Green's appeal—just like Looper's—is an improper interlocutory appeal from an order that is not immediately appealable pursuant to well-established South Carolina law and must be dismissed.¹ Cf. Looper, 421 S.C. at 390, 807 S.E.2d at 206 (“As Petitioner has not been convicted and sentenced, there has been no final judgment, and as no exception to the requirement of a final judgment is applicable under the facts of this case, Petitioner's appeal is premature and *must be* dismissed.” (emphasis added)).

¹ Significantly, as noted by our Supreme Court in the Looper decision, Green will be able to properly appeal the circuit court judge's order reversing the dismissal of his charge in the future if he is ever actually convicted of and sentenced for that charge. See Looper, 421 S.C. at 390 n. 4, 807 S.E.2d at 206 n. 4 (“If Petitioner is convicted and sentenced in the magistrate's court, he may then challenge on appeal the circuit court's reversal of the magistrate's order suppressing evidence and dismissing the charge.”).

WHEREFORE, Respondent prays this Court will dismiss Appellant's appeal as an improper interlocutory appeal from an order that is not immediately appealable; remand the case to the magistrate court for further proceedings as directed by the circuit court; hold this appeal in abeyance pending a ruling on Respondent's motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General

By: 

Mark R. Farthing
S.C. Bar Number 76901

January 19, 2024

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SC Court of Appeals

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PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Motion to Dismiss Appeal on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

H. Fred Kuhn, Jr.
Moss & Kuhn, PA
Post Office Drawer 507
Beaufort, SC 29901
fred@mossandkuhn.com

I further certify all parties required by Rule to be served have been served.
This 19th day of January, 2024.



CAROLINE COLLINS
Administrative Coordinator