

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort and Hampton Counties
Honorable Clifton Newman, Circuit Court Judge
Appellate Case No. 2023-001493

THE STATE,

Respondent,

vs.

CORY HOWERTON FLEMING,

Appellant.

**MOTION TO DISMISS APPEAL
WITHOUT PREJUDICE AS PREMATURE
OR
TO HOLD APPEAL IN ABEYANCE
PENDING FINAL RULING BY CIRCUIT COURT**

Respondent, through its undersigned counsel, would respectfully show unto the Court as follows:

I.

For years, Appellant Cory Howerton Fleming, who—at the time—was a licensed attorney, engaged in “deplorable misconduct and shocking abuse of the legal system in South Carolina” in order to steal from his clients. In re Fleming, 441 S.C. 512, 513, 895 S.E.2d 672, 514 (2023). Once his nefarious scheming came to light, the State Grand Jury of South Carolina issued multi-count indictments charging Fleming with twenty-three separate and distinct criminal offenses. On August 23, 2023, Fleming appeared before the Honorable Clifton Newman, circuit court judge, and pled guilty to all his state charges, which collectively carried a maximum

possible sentence of a 195-year term of imprisonment along with potential monetary fines. Sentencing was deferred until September 14, 2023. On that date, Fleming again appeared before Judge Newman, and, at the conclusion of the hearing, Judge Newman imposed an aggregate ten-year term of imprisonment that was to be served consecutively to a forty-six-month prison sentence Fleming had already received for a federal conviction. Additionally and importantly, Judge Newman deferred any hearings or rulings on the matter of restitution to a later date.¹ Thereafter, before the restitution issue was resolved, Fleming initiated an appeal of his convictions and aggregate sentence through the filing of a notice of appeal on September 21, 2023. At present, Fleming’s appeal is currently pending before this Court.

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 the sentence is imposed. 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 not generally appeal until *after* the sentence has been imposed. Parsons v. State, 289 S.C. 542, 542, 347 S.E.2d 504,

¹ The portion of the sentencing hearing transcript demonstrating Judge Newman elected to defer ruling on the matter of restitution has been included with this motion as Attachment “A.”

504 (1986). And, significantly, restitution is a component part of a criminal defendant's sentence when the crimes committed resulted in pecuniary damages or loss to the defendant's victim or victims. See S.C. Code Ann. § 17-25-322(A) ("When a defendant is convicted of a crime which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due the victim or victims of the defendant's criminal acts. The restitution hearings must be held unless the defendant in open court agrees to the amount due, and in addition to any other sentence which it may impose, the court shall order the defendant make restitution or compensate the victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the victim's legal representative as well as the Attorney General and the solicitor have the right to be present and be heard upon the issue of restitution at any of these hearings."); State v. Gullede, 326 S.C. 220, 229, 487 S.E.2d 590, 594 (1997) ("The restitution hearing is part of the sentencing proceeding."); State v. Morgan, 417 S.C. 338, 341-342, 790 S.E.2d 27, 29 (Ct. App. 2016) ("When a defendant is convicted of a crime causing pecuniary damages or loss to a victim, section 17-25-322(A) of the South Carolina Code (2014) *requires* that the court hold a hearing to determine the amount of restitution due the victim as a result of the defendant's criminal acts." (emphasis added)).

III.

In Fleming's case, Fleming now stands convicted of twenty-three separate state criminal offenses, and Judge Newman has now imposed the aggregate term-of-years sentence he determined was warranted by Fleming's many crimes. However, to date, no determination has yet been made in a South Carolina state court concerning the amount of restitution Fleming owes to his victims *despite* Judge Newman unambiguously expressing an intention to make such a determination at a future point. Since the matter of restitution—which is a component part of

sentencing—currently remains unresolved and outstanding in Fleming’s case, Fleming has not yet obtained a full and final judgment in his case, and, thus, his notice of appeal was prematurely filed. See Gullede, 326 S.C. at 229, 487 S.E.2d at 594 (instructing a restitution hearing is part of the sentencing proceeding); 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.” (emphasis added)). Accordingly, because Fleming’s appeal was and is premature and the issue of restitution still needs to—consistent with Judge Newman’s expressed intentions—be resolved, this Court should either: (1) dismiss Fleming’s appeal without prejudice as premature; or (2) hold Fleming’s appeal in abeyance and remand the matter to the circuit court in order for the issue of restitution to be addressed. Cf. Hudson v. Hudson, 290 S.C. 215, 215, 349 S.E.2d 341, 341 (1986) (instructing “the appeal shall be dismissed without prejudice” when the appellate court discovers a timely-filed post-trial motion remains outstanding). By doing so, this Court will ensure Judge Newman is able to properly resolve the matter of restitution in accordance with South Carolina law while simultaneously preventing any issues from arising that could unnecessarily result in piecemeal appellate proceedings in Fleming’s case. See Stone v. Thompson, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) (“The provisions of section 14-3-330 are narrowly construed and serve the underlying policy favoring judicial economy by avoiding ‘piecemeal appeals.’ ”); State v. Rearick, 417 S.C. 391, 400, 790 S.E.2d 192, 197 (2016) (explaining piecemeal appeals constitute bad practice and are generally condemned and instructing that is particularly true in the context of criminal cases).

WHEREFORE, Respondent prays the Court will dismiss Appellant’s appeal without prejudice as premature; will—in the alternative—hold Appellant’s appeal in abeyance and remand the matter to the circuit court in order for the issue of restitution to be addressed; will

hold the appeal in abeyance pending a ruling on the State's motion; and will grant such other and further relief as the Court may deem just and proper.

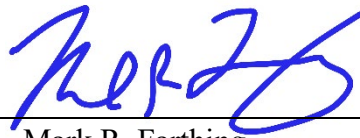
Respectfully submitted,

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Senior Assistant Deputy Attorney General

By: 
Mark R. Farthing
S.C. Bar 76901

February 9, 2024

ATTACHMENT "A"

IN THE STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA) NOS. 2021-GS-47-30; and
))
) 2022-GS-47-02
))
CORY HOWERTON FLEMING) TRANSCRIPT OF RECORD
) Sentencing

B E F O R E:

The Honorable Clifton B. Newman, Judge

DATE: Thursday, September 14 ,2023
11:27 a.m.
Beaufort, South Carolina

A P P E A R A N C E S:

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Attorneys for the Defendant

Reported by: Cathy J. Provost, RMR, Official Court Reporter

1 individually, you know, we would be here for a few hours,
2 probably.

3 So suffice it to say, with regard to the Satterfields -- and
4 I'm going to need my clerk here to take notes for me -- on Count
5 10 where the exposure is zero to 5, the sentence is 5 years. I
6 wrote insurance. Is that insurance fraud?

7 ATTORNEY WATERS: Yes, sir.

8 THE COURT: That count number or indictment no?

9 ATTORNEY WATERS: That's what's count 11, Your Honor.

10 THE COURT: Count 11 --

11 ATTORNEY WATERS: Yes, Your Honor.

12 THE COURT: -- under exposure zero to 10, the sentence is 10
13 years; on the breach of trust with a 10-year possibility or
14 exposure, the sentence is 10 years; on the money laundering where
15 the exposure is zero to 20 years, the sentence is 10 years; on
16 the 5-year breach of trust, the sentence is 5 years; on the
17 5-year money laundering, I believe it is, it's 5 years; and on
18 the computer crime, the sentence is 5 years. And each of those
19 will run concurrent with each other.

20 As to the breach of trust involving the Pinckneys, 5 and --
21 Counts 5 and 9, is it --

22 ATTORNEY WATERS: Yes, sir.

23 THE COURT: -- where the exposure is 5 years, the sentence
24 is 5 years; the 30-day breach of trust, Count 6, the sentence is
25 time served; on the conspiracy charge, the sentence is 5 years;

1 on the breach of trust where the exposure is 10 years, the
2 sentence is 10 years. That sentence will run consecutive to the
3 sentence that you're currently serving. All the sentences
4 otherwise will run concurrent with each other.

5 I'm going to defer any restitution hearings. I believe it's
6 just too convoluted for me to get a true handle on what the State
7 is seeking and what should be ordered, and I tend to think that
8 it's -- well, I don't want to prejudge whether it's necessary or
9 not, but I'm going to defer anything, any ruling, regarding any
10 restitution. I'm not sure whether the State is actually seeking
11 it, whether there's an actual loss, if there is, whether the
12 parties can agree. We can have a separate hearing solely dealing
13 with restitution, if necessary.

14 That is the sentence of the Court. Best wishes,
15 Mr. Fleming.

16 MR. FLEMING: Thank you, sir.

17 ATTORNEY WATERS: Thank you, Your Honor.

18 THE COURT: Anything further here today, Mr. Waters?

19 ATTORNEY WATERS: No, sir. That will conclude the State
20 Grand Jury matters for today, Your Honor.

21 THE COURT: All right. Court will be adjourned.

22 (End of Transcript of Record.)
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24
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SC Court of Appeals

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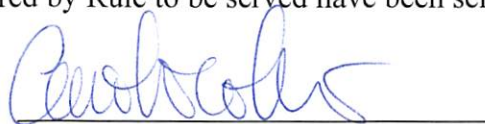
PROOF OF SERVICE

I, Caroline Collins, certify I have served the within Motion to Dismiss Appeal Without Prejudice as Premature or to Hold Appeal in Abeyance Pending Final Ruling by Circuit Court on Appellant by sending an electronic copy via email to the address listed in AIS for the following individuals:

Elizabeth A. Franklin-Best, Esq.
elizabeth@franklinbestlaw.com

Deborah B. Barbier, Esq.
dbb@deborahbarbier.com

I further certify that all parties required by Rule to be served have been served.
This 9th day of February, 2024.



CAROLINE COLLINS
Administrative Coordinator