

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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AUG 22 2013

Appeal from Laurens County
Honorable Frank R. Addy, Circuit Court Judge
2012-GS-30-1044,1045
Appellate Case No. 2013-000867

S.C. Supreme Court

THE STATE,

Respondent,

vs.

JUAN KEVIN BURNS,

Appellant.

MOTION TO DISMISS APPEAL PURSUANT TO STATE V. ISAAC

Respondent ("the State"), through its undersigned counsel, would respectfully move to dismiss the appeal from as an improper interlocutory appeal from an order denying immunity under the Protection of Person's and Property Act pursuant to State v. Isaac, Op. No. 27302 (S.C. Sup. Ct. filed August 21, 2013) (Shearouse Adv. Sh. No. 37 at 15, 17). Respondent would show this Court the following:

I.

This case involves an appeal by Juan Kevin Burns from an April 12, 2013 Order of the Honorable Frank R. Addy, Jr., denying a motion to dismiss the Laurens County indictment for murder and award immunity from prosecution pursuant to the Protection of Person's and Property Act, S.C. Code Ann. 16-11-410, et seq. The order was from a hearing held on February 25-27, 2013. The Appellant was represented by James Bannister and Alex Stalvey and the State

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was represented by Warren Mowry and Ruston Neely of the Eighth Circuit Solicitor's Office. Judge Addy entered his order denying the motion seeking immunity dated April 11, 2013 on April 12, 2013.

The Appellant, through counsel James Bannister filed a notice of appeal in the Supreme Court of South Carolina on April 19, 2013. The matter is presently awaiting receipt of the hearing transcript from the Court Reporter which is due August 25, 2013.

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 Miller, 289 S.C. at 426, 346 S.E.2d at 705 ("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. 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** appeal until **after** a sentence has been imposed. Parsons v. State, 289 S.C. 542, 542, 347 S.E.2d 504, 504 (1986).

III.

Yesterday, in State v. Isaac, the South Carolina Supreme Court instructed that an order denying a request for immunity from prosecution under the South Carolina Protection of Persons and Property Act does not fall within any category of orders that are immediately appealable under Section 14-3-330. State v. Isaac, Op. No. 27302 (S.C. Sup. Ct. filed August 21, 2013)

(Shearouse Adv. Sh. No. 37 at 15, 17). In reaching that conclusion, the Supreme Court explained that an order denying a request for immunity was not a final order and was not an interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver. Id., (Shearouse Adv. Sh. No. 37 at 18-19). As a result, the Supreme Court held that “the denial of a request for immunity under the Act is not immediately appealable.” Id., (Shearouse Adv. Sh. No. 37 at 21).

IV.

In the case sub judice, Appellant is appealing from Judge Addy’s order denying his motion to dismiss based upon request for immunity from prosecution. However, Appellant’s case has not yet gone to trial, and Appellant has not yet been convicted or sentenced. See State v. Hughes, 56 S.C. 540, 35 S.E. 214, 215 (1900) (recognizing that the general rule is that a criminal defendant cannot appeal until he has been convicted and sentenced), cited in State v. Isaac, infra.

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Accordingly, Appellant’s appeal is an improper interlocutory appeal from an order that is not immediately appealable and should be dismissed, and Appellant’s case should be remanded for trial. See Isaac, (Shearouse Adv. Sh. No. 37 at 23) (instructing that the denial of a defendant’s request for immunity pursuant to the South Carolina Protection of Persons and Property Act is not subject to immediate appeal, dismissing Isaac’s appeal, and remanding for trial); see also State v. Hubbard, 277 S.C. 568, 569, 290 S.E.2d 817, 817 (1982) (“The appellants have not yet gone to trial. An appeal in a criminal case must attend the final judgment rendered on the indictment. No final judgment has occurred in this case and the order appealed from is

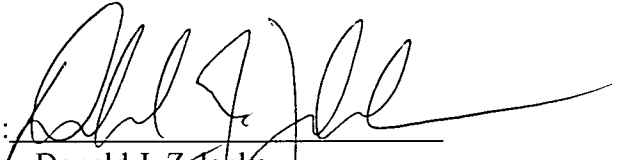
interlocutory. Therefore, we dismiss the appeal and remand the case for trial.” (citations omitted)).

WHEREFORE, Respondent moves this Court to dismiss Appellant’s notice of appeal and appeal as an improper interlocutory appeal from an order that is not immediately appealable; remand the case to the circuit court for trial; 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.

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Respectfully submitted,
ALAN WILSON
Attorney General

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Senior Assistant Deputy Attorney General

By: 
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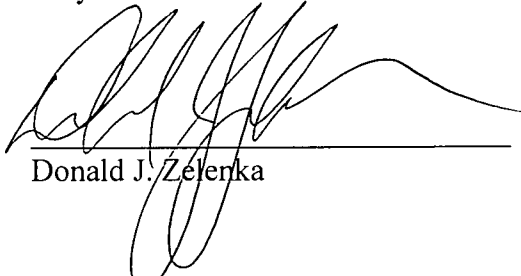
PROOF OF SERVICE

I, Donald J. Zelenka, certify that I have served the within Motion to Dismiss Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

James W. Bannister, Esquire
Bannister and Wyatt, LLC
P. O. Box 10007
Greenville, S.C. 29063

Robert M. Dudek, Esquire
S. C. Commission on Indigent Defense
1330 Lady Street, Suite 401
Columbia, S.C. 29201

I further certify that all parties required by Rule to be served have been served.
This 22nd day of August, 2013.



Donald J. Zelenka

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August 22, 2013

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