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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
The Honorable Robin S. Stilwell, Circuit Court Judge
Appellate Case No. 2012-208587

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

TERRY DEAN GREGORY,

APPELLANT.

MOTION TO DISMISS APPEAL

Comes now Respondent, above named, by and through the Office of the South Carolina Attorney General, and hereby moves to dismiss the appeal in this matter and remand the case to the Greenville County Court of General Sessions for trial. Respondent submits that in light of this Court's decision in State v. Isaac, Op. No. 27302 (S.C.Sup.Ct. filed August 21, 2013) (Shearouse Adv.Sh. No. 37 at 15), this appeal is not properly before this Court because it is based upon the denial of a motion for immunity, which is not immediately appealable. In support of this Motion, Respondent would show this Court the following:

On October 19, 2010, Appellant Terry Dean Gregory ("Appellant") was indicted for Murder (2010-GS-23-6119), Possession of a Weapon during the Commission of a Violent Crime (2010-GS-23-6119), and Pointing and Presenting a Firearm (2010-GS-23-6118). On February 24, 2011, Appellant filed a Motion

Asserting Statutory Immunity from Prosecution S.C. Code § 16-11-450 and Demand for Pre-Trial Hearing. (R. pp. 12-3). The State filed its Response to Defendant's Motion Demanding Pre-Trial Hearing for Statutory Immunity pursuant to S.C. Code § 16-11-450 on March 11, 2011.

An evidentiary hearing on the Motion was held before the Honorable Robin B. Stilwell, Circuit Court Judge, on November 7-8, 2011. Appellant was present and was represented by James W. Bannister, Esquire. The State was represented by Assistant Solicitor Mark Moyer, Esquire, of the Thirteenth Judicial Circuit. At the conclusion of the evidentiary hearing, the trial court requested proposed orders from both parties.

On January 30, 2012, the trial court filed an Order denying Appellant's Motion Asserting Statutory Immunity from Prosecution S.C. Code § 16-11-450 and Demand for Pre-Trial Hearing. (R. pp. 2-10). Appellant subsequently filed a Motion for Reconsideration and Memorandum in Support on February 7, 2012. (R. pp. 22-47). On February 17, 2012, the trial court filed an Order denying the Motion for Reconsideration. (R. p. 11).

Appellant then filed a Notice of Appeal. Appellant requested this Court reverse the trial court's Order denying the Motion Asserting Statutory Immunity from Prosecution and dismiss the indictments now pending against Appellant.¹

In State v. Isaac, this Court held "the denial of a request for immunity under the [Protection of Persons and Property] Act is not immediately appealable." Isaac, at p. 6. The appeal in this case is an immediate appeal filed after the denial

¹ Briefs were filed by the parties, and argument was heard by this Court on June 6, 2013.

of a request for immunity under the Act. As noted in Isaac, the trial court's Order denying the motion for immunity in this case was not immediately appealable under S.C. Code Ann. § 14-3-330. As a result, the pending appeal is an improper interlocutory appeal. Thus, Respondent submits this appeal should be dismissed, and the case should be remanded to the Greenville County Court of General Sessions for trial.

WHEREFORE, premises considered, Respondent respectfully requests this Court dismiss this appeal and remand the case to the Greenville County Court of General Sessions for further proceedings.

Respectfully submitted,

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BY: 

Alphonso Simon, Jr. (Bar No. 74713)
ATTORNEYS FOR RESPONDENT

August 22, 2013.

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IN THE SUPREME COURT

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THE STATE OF SOUTH CAROLINA,

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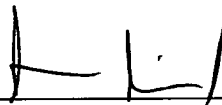
APPELLANT.

PROOF OF SERVICE

I, Alphonso Simon, Jr., Counsel for the Respondent, certify that I have served the within Motion to Dismiss Appeal via United States Mail, first class, postage prepaid to his attorney of record, James W. Bannister, Esq., Bannister & Wyatt, LLC, 401 Pettigru Street, Greenville, SC 29601.

I further certify that all parties required by Rule to be served have been served.

This 22nd day of August, 2013.



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