

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable Alison Renee Lee, Circuit Court Judge
Appellate Case No. 2012-211933

RECEIVED
AUG 27 2013
S.C. Supreme Court

THE STATE,

Respondent,

vs.

ALIRIO ORTIZ,

Appellant.

MOTION TO DISMISS APPEAL

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

I.

In January of 2011, a Richland County Grand Jury indicted Appellant on two counts of assault and battery of a high and aggravated nature. On January 12, 2012, a hearing was held before the Honorable Alison R. Lee. Attorneys James May and Kris Hines represented Appellant, and Assistant Solicitors April Sampson and Justin Williams represented the State. At the hearing, Appellant asserted the statutory immunity from prosecution under the Protection of Person and Property Act (“the Act”), S.C. Code § 16-11-410, et seq.

After hearing testimony and argument, Judge Lee asked the parties to submit revised proposed orders. On April 18, 2012, Judge Lee found that Appellant was not entitled to immunity from prosecution under the Act. On April 25, 2012, Appellant filed a Notice of Intent

to Appeal. On June 5, 2013, this Court heard oral arguments on this matter. As of date, this Court has not issued an opinion in this case.

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.

Recently, in State v. Isaac, this 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, this 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, this 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.

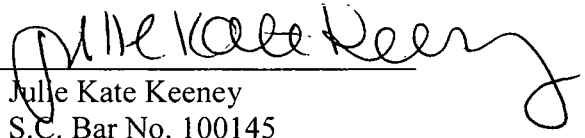
Here, Appellant is appealing from the trial court’s order denying his request for immunity from prosecution. However, Appellant’s case has not yet gone to trial, and Appellant has not yet been convicted or sentenced. See Wilson, 387 S.C. at 603, 693 S.E.2d at 926 (recognizing that the general rule is that a criminal defendant cannot appeal until he has been convicted and sentenced). 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 prays that 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 circuit court for trial; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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August 27, 2013

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PROOF OF SERVICE

I, Ellen R. DuBois, 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:

Kathrine H. Hudgins, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 27th day of August, 2013.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

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