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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

J. Mark Hayes, II, Circuit Court Judge

Case No.: 2018-GS-42-6403 and 6404

The State.....Appellant,

v.

Casey Allen Douglas.....Respondent.

MEMORANDUM IN OBJECTION TO APPEALABILITY OF ORDER

The Notice of Appeal filed by the State of South Carolina is untimely in this case. The State prematurely seeks appellate review of two interlocutory orders issued by the Circuit Court: the first, the order Pursuant to Section 44-23-460, issued on November 26, 2024; and, the second order, the Order Denying Motions for Reconsideration, issued on May 2, 2025. Because both orders for which appellate review is sought are interlocutory and are not explicitly authorized by statute or legislative intent, and neither affect the merits of the case or its finality, appellate review is presently barred.

Generally, S.C. Code Ann. § 14-3-330 governs the appealability of interlocutory orders and grants the right of appeal directly to the Supreme Court of South Carolina for cases which:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
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> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
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> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
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> (4) 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.

However, SC Code Ann. § 14-8-200, grants limited appellate jurisdiction to the South Carolina Court of Appeals, stating in part that "…the court has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit court…" but also, "this jurisdiction is appellate only, and the court shall apply the same scope of review that the Supreme Court would apply in a similar case."

Further, the right of appeal arises from and is controlled by statutory law. *North Carolina Federal Sav. and Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 347 S.E.2d 97 (1986). An appeal ordinarily may be pursued only after a party has obtained a final judgment. *Mid-State*

Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993); S.C. Code Ann. § 14-3-330(1) (1976); Rule 72, SCRCP; Rule 201(a), SCACR.

In *State v. Rearick*, 417 S.C. 391, the court held that significantly, appellate court decisions that pre-date and post-date the enactment of §14-3-330 have consistently held that a defendant may appeal only after sentence has been imposed. As an example, the court cited its previous ruling from McKettrick, (holding that the sentence of the defendant in the Court of General Sessions is the final judgment, from which alone an appeal may be taken. *State v. McKettrick*, 13 S.C. 439, 439 (1880).) as justification for its decision in *Hughes* stating that, "It is a bad practice, and generally condemned, to hear appeals by piecemeal, especially in criminal cases; for it is destructive of the prompt administration of justice, which is so essential to the peace of society. To allow appeals to be heard from such preliminary rulings would enable a party charged with the most serious crime always to secure a continuance, when otherwise not entitled to it, by simply moving to quash the indictment, and, when his motion is overruled, give notice of appeal from such ruling, and thereby stop the trial, as was in the present case. … Both reason and authority require us to hold that this appeal is premature, and must therefore be dismissed. *State v. Hughes*, 56 S.C. 540, 35 S.E. 214 (1900). Moreover, the court in Rearick reasoned that "[a]bsent an unambiguous expression of legislative intent, we see no reason to alter settled law concerning appealability" (citing *State v. Miller*, 289 S.C. 426, 346 S.E.2d 705 (1986))

Consequently, it has been stated by the court that "If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory." *Mid-State Distribs, Inc. v. Century Imps., Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). §14-3-330 provides that only final judgments and certain interlocutory orders are immediately appealable [and] "An order which does not finally end a case or prevent a final

judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood v. Sommerville*, 362 S.C. 191 at 195, 607 S.E.2d at 709.

Given this, "An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right." *Burkey v. Noce*, 398 S.C. 35, 37, 726 S.E.2d 229, 230 (Ct. App. 2012). "An order 'involves the merits,' as that term is used in [s]ection 14-3-330(1)[,] and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense." (alterations in original) (*quoting Ex. Parte Capital U-Drive-It, Inc.*, 369 S.C. at 7, 630 S.E.2d at 467-68) "A final judgment is an order that 'dispose[s] of the cause, . . . reserving no further questions or directions for future determination. It must finally dispose of the whole subject-matter or be a termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined.'" (alterations in original) (quoting *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 41-42, 21 S.E.2d 209, 212 (1942)).

Here, the order for which appellate review is sought is not a final judgement of the underlying criminal indictment(s), but rather an alteration of a prior established order declaring the defendant incompetent and directing the State to initiate judicial commitment proceedings for the involuntary commitment of the defendant. The State failed to avail itself of the proper appellate remedies contemplated by the South Carolina Code of Laws. After a ruling by the probate court, §44-17-620 states:

> The petitioner or the person shall have the right to appeal from any order of the probate court issued pursuant to Section 44-17-580 to the court of common pleas of the county where the probate court is situated. The notice of intention to appeal together with the grounds for the appeal shall be filed in the probate court and the court of common pleas within fifteen days of the date of the order issued

> pursuant to Section 44-17-580. The appeal shall be heard by any circuit judge having jurisdiction in the county upon the record of the probate court. The judge may require that additional evidence be presented in the hearing if notice is given to both appellant and respondent.

The findings of the probate court were not appealed by the State. The method and manner in which the order of the probate court administers the provisions of its order do not foreclose a time when the defendant may be judged to be competent and criminal prosecution resumed; however, treatment decisions affecting the defendant do preclude the State from being considered an aggrieved party pursuant to Rule 201(b), SCACR. An example of appropriate appellate review of an interlocutory order occurred in State v. McKnight, where the State appealed an order granting suppression of evidence which significantly impaired the prosecution of a criminal case 287 S.C. 167, 168, 337 S.E.2d 208, 209 (1985). As stated before, the criminal prosecution of the case at bar is not foreclosed but, arguably impaired until such time as the defendant has the ability to understand the proceedings against him and to assist his counsel in the preparation of a full and complete defense.

This order does not prohibit or deny the State from continuing its prosecution of the case should the condition of incompetence ever change and therefore, because the judgement is not final, it is interlocutory. Further, the order does not involve the merits of the case because, as stated previously, it does not determine with finality any substantial change in the underlying criminal case for which the State has secured an indictment, but rather only modifies a previous order declaring the defendant not competent to stand trial.

Therefore, because the order for which appellate review is sought is interlocutory and does not affect the merits or final judgement of the case, the notice of appeal and any subsequent related filings are untimely and should be dismissed as such.

Respectfully submitted,

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