

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Mark Hayes, Presiding Judge

Court of Appeals Tracking # 2013-002751

Indictment # 2012-GS-42-04849

RECEIVED

JAN 09 2014

SC Court of Appeals

THE STATE,

Respondent,

vs.

MARC HUBBARD,

Appellant.

MOTION TO DISMISS APPEAL

Respondent hereby moves to dismiss the instant appeal in a criminal case, as it both interlocutory and as a nullity as it was filed *pro se* by a represented party. **Appellant has yet to be tried, and a date certain for this trial is set for January 27, 2014 – a date that will be threatened unless this clearly impermissible interlocutory appeal is not expeditiously dismissed.**

I.

Appellant has been indicted by the Spartanburg County Grand Jury for Securities Fraud. On December 6, 2013, Appellant through his counsel O. Cyrus, Hinton, Esquire,

presented a pretrial motion to dismiss for lack of territorial jurisdiction to prosecute the defendant for the crime alleged. On December 11, 2013, the court issued an order denying Appellant's motion.

Appellant, proceeding *pro se*, then served the instant notice of appeal from the order denying his motion to dismiss based on territorial jurisdiction.

II.

First, the instant appeal from the order denying the pre-trial motion to dismiss based on territorial jurisdiction is clearly an interlocutory appeal for which no exception applies. Territorial jurisdiction is similar to subject matter jurisdiction. See State v. Dudley, 364 S.C. 578, 614 S.E.2d 623 (2005). An order denying a motion to dismiss for lack of subject matter jurisdiction is not immediately appealable. Deskins v. Boltin, 319 S.C. 356, 461 S.E.2d 395 (1995). Thereby, an order denying a motion to dismiss for lack of territorial jurisdiction is not immediately appealable. Moreover, a criminal defendant generally may not appeal until sentence is imposed. State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986); Parsons v. State, 289 S.C. 542, 347 S.E.2d 504 (1986). Respondent thus submits that the appeal should therefore be dismissed as premature.

Alternatively, Appellant has filed this appeal *pro se*, although he is still represented by counsel in this General Sessions matter. Of course, Appellant has no inherent right to represent himself in his direct criminal appeal. See State v. Roberts, 364 S.C. 583, 588, 614 S.E.2d 626, 629 (2005) ("Appellant clearly does not have a federal constitutional right to proceed pro se in this appeal from his criminal conviction. We also find there is no state constitutional provision which confers such a right."). More importantly, there is no

right to hybrid representation, and *pro se* documents filed by a represented party should not be accepted by the Clerk of Court. See Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to “hybrid representation” that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

As such, since the current notice of appeal was not filed by counsel, it is a nullity and the instant appeal should be dismissed.

III.


Respondent moves this Court to dismiss appellant’s appeal because the order is not immediately appealable, and alternatively because the notice of appeal is a nullity as it was filed by a *pro se* criminal defendant who is represented by counsel.

WHEREFORE, Respondent respectfully prays that this Court dismiss the above-captioned appeal for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

HEATHER S. WEISS
Assistant Deputy Attorney General

BY: A handwritten signature in cursive script that reads "Heather S. Weiss". The signature is written in black ink and is positioned above a horizontal line.

Heather S. Weiss
Assistant Deputy Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3693

ATTORNEYS FOR RESPONDENT

January 9, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Mark Hayes, Presiding Judge

Court of Appeals Tracking # 2013-002751

Indictment # 2012-GS-42-04849

THE STATE,

Respondent,

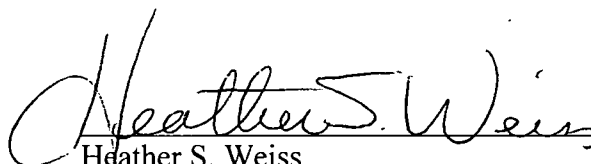
vs.

MARC HUBBARD,

Appellant.

CERTIFICATE OF SERVICE

I, Heather S. Weiss, hereby certify that I have served Respondent's **Motion to Dismiss Appeal** on O. Cyrus Hinton, Esquire, 235 E. Main Street, Suite 110, Rock Hill, South Carolina 29730, by depositing a copy in the United States mail, postage prepaid, this 9th day of January, 2014.



Heather S. Weiss
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3693

Attorney for Respondent



ALAN WILSON
ATTORNEY GENERAL

January 9, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Marc Hubbard
Appeal from Spartanburg County
Indictment No. 2012-GS-42-04849

S.C. Court of Appeals Tracking No. 2013-002751

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the **Motion to Dismiss Appeal**, dated January 9, 2014, together with the Certificate of Service, in the above-captioned case. **Please note this is a *pro se* interlocutory appeal which threatens a trial date certain of January 27, 2014.**

Thank you for your assistance in this matter. Please call this office if you need any additional information.

Sincerely,

Heather S. Weiss
Assistant Deputy Attorney General

RECEIVED

cc: O. Cyrus Hinton, Esquire

JAN 09 2014

SC Court of Appeals