STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appellate Case No. 2014-000697

THE STATE,

Respondent,

v.

AARON JAY CARTER,

Appellant

RECEIVED
JUL 21 2014
SC Court of Appeals

RETURN TO MOTION TO REINSTATE STYLED "MOTION TO APPEAL THE ORDER DATED JUNE 16, 2014"

The Respondent State of South Carolina, upon the request of the Clerk of Court, hereby makes a Return to the Pro Se motion fully styled "Notice and Motion to appeal the order dated June 16, 2014, signed by the Honorable P. Short on Case No. 2014-000697 pursuant to Rule 57 of the ALC Rules and Procedures" received by the Clerk June 27, 2014. The Clerk has construed this as a "Motion to Reinstate." In the motion, Carter states he is "appealing the decision" dismissing the matter. Further, he acknowledges that the matter involves a March 28, 2014 *pro se* notice of appeal from an April 25, 2013 order denying a pretrial motion to dismiss a prosecution under the Interstate Agreement on Detainers and a June 24, 2013 order denying reconsideration of the motion entered by the Honorable Clifton Newman, Presiding Judge.

I.

On June 16, 2014, the South Carolina Court of Appeals entered an Order dismissing the appeal "because Appellant failed to timely serve the notice of appeal on Respondent as set forth

in Rule 203(b)(2) of the South Carolina Appellate Court Rules." As stated above, the *pro se* Notice of Appeal received March 28, 2014 involved pretrial orders filed April 25, 2013 and June 24, 2013. Therefore, assuming arguendo that the appeal would not be interlocutory, it had to be served upon the Solicitor's Office of the Second Circuit within ten (10) days of the date of the orders. It was not done by July 5, 2013. The notice was not delivered until March 28, 2014. On the notice of appeal dated "3-24-14" Carter, *pro se*, states his counsel received the April 23, 2013 order by mail on April 29, 2013. Therefore, the notice is untimely and any service on or after March 24, 2014 is also untimely. Since the appeal is not timely, the Court lacks jurisdiction. State v. Hinson, 303 S.C. 92, 399 S.E.2d 422 (1990). The dismissal was proper. Reinstatement of the notice of appeal is not proper.

The Appellant has cited to Houston v. Lack, 487 U.S. 266 (1988). In Houston, the United States Supreme Court held that a *pro se* prisoner's notice of appeal in a federal habeas corpus case is deemed filed at the moment it is delivered to prison authorities for mailing to the federal district court. However, in South Carolina, the issue is when the matter is served upon the opposing party.

Houston v. Lack has no applicability in this state court setting. Service may be accomplished by SCACR Rule 262(b) consistent with the time frame set forth in Rule 203 of ten (10) days. Jurisdiction of an appeal is established by the service, not the filing of the notice of appeal. It remains untimely, even if Houston v. Lack was applicable.

Further, the Appellant ignores that he is currently represented by appointed counsel in the underlying criminal action. He was initially represented by Stephen Geoly and is presently represented in the pending prosecution by Wallis A. Alves of the Second Circuit Public Defender's Office. Since there is no right to "hybrid representation", the notice of appeal *pro se* from a decision in the trial court was not proper. See State v. Roberts, 364 S.C. 583, 614 S.E.2d

626 (2005) (no state or federal constitutional right to proceed pro se in a criminal appeal); State v. Stuckey, 333 S.C. 56, 58, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). As the Court declared in Stuckey, "since there is no right to hybrid representation, substantive documents filed pro se by a person represented by counsel are not accepted unless submitted by counsel." For this additional reason, the notice of appeal should have been rejected and returned.

II.

Alternately, the Clerk styled "motion to reinstate" the appeal should be denied because the appeal is premature and interlocutory. State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013); State v. Parker, 267 S.C. 317, 323, 227 S.E.2d 677, 679 (1976) (denied of a motion to quash indictment is not immediately appealable).[1] The general rule is that a criminal defendant may not

[1] Respondent notes that consistent with the rejection by Judge Newman on April 23, 2013, the courts of several other states have addressed the same factual scenario and concluded that the IAD ceases to apply once a prisoner is released from his sentence in the sending state. For example, in State v. Quiroz, 94 N.M. 517, 612 P.2d 1328 (App.1980), the defendant was indicted by a state grand jury on drug trafficking charges. Prior to the return of that indictment, Quiroz was convicted of unrelated federal charges and imprisoned in a federal correctional facility. Thereafter, the State of New Mexico lodged a detainer against him and requested temporary custody pursuant to the IAD for the purpose of trying him on his state drug trafficking charges. Quiroz was transferred by the federal authorities to state custody, and a trial date was set. Prior to his trial date, and prior to the date before which he was required to be tried under the IAD, Quiroz was discharged from his federal sentence.

On the day he was scheduled for trial, which fell outside the IAD's time limitations, Quiroz filed a motion to dismiss his indictment. The trial court granted the motion and the state appealed. The Court of Appeals reversed, finding that, upon his release from federal custody prior to the date he was required to be tried in state court under Article IV(c) of the IAD, Quiroz "could no longer rely on [the] provisions [of the IAD]" because the policy considerations underlying the IAD, i.e., "the eradication of uncertainties which obstruct programs of prisoner treatment and rehabilitation," id. at 1331, no longer existed. Notably, the New Mexico court rejected Quiroz's reliance on this Court's decision in Merlo, finding its facts distinguishable.

Similarly, in State v. Butler, 496 So.2d 916 (Fla.App.1986), Butler was imprisoned in Ohio when a Florida detainer was lodged against him. He requested disposition pursuant to the IAD and was transported to Florida. Prior to the expiration of the 180–day time limit under Article III(a) of the IAD, Butler was discharged from his Ohio sentence. When Butler subsequently moved for dismissal on IAD speedy trial grounds, the trial court granted relief. The appeals court reversed, finding that: (1) the IAD applies only to "prisoners" of sending states and once an individual is discharged by the sending state, he is no longer a "prisoner"; and (2) the policy rationale behind the IAD cease to be relevant once an individual is no longer incarcerated and subject to the sending state's rehabilitative programs.

Numerous courts from other jurisdictions around the country, that both the plain language of the IAD and the policy considerations underlying the statute militate in favor of a finding that its terms no longer apply once a prisoner has been discharged from his sentence in the sending state. See Pristavec v. State, 496 A.2d 1036 (Del.1985) (release of prisoner during 180–day period in effect nullifies purpose of IAD); State v. Oxendine, 58

appeal "except from the final sentence imposed by the court." State v. Timmons, 68 S.C. 258, 47 S.E. 140 (1904); Parsons v. State, 289 S.C. 542, 347 S.E.2d 504 (1986); State v. Washington 285 S.C. 457, 330 S.E.2d 289 (1985). The Court has held that consistent with this Rule, an order denying a double jeopardy claim is not immediately appealable. State v. Wyatt, 115 S.C. 325, 105 S.E. 704 (1921); State v. Hill, 74 S.C.415, 54 S.E. 614 (1906). Like the immunity claim in Isaac, a double jeopardy claim would be similarly considered as an injunction-type issue, yet the Court has consistently held the denial; was not appealable by a criminal defendant. Accord, State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986). As cited in State v. Miller, see, e.g., State v. Robinson, 337 S.C. 204, 337 S.E.2d 204 (1985) [trial in absence, appeal prior to sentence]; State v. Dingle, 279 S.C. 278 306 S.E.2d 223 (1983) [order committing defendant to Department of Mental Health]; State v. Hubbard , 277 S.C. 568, 290 S.E.2d 817 (1982) [denial of motion to suppress evidence]; State v. Parker, 267 S.C.317, 227 S.E.2d677 (1976) [denial of motion to quash indictment]; Ex parte Murray, 261 S.C. 255, 199 S.E.2d 718 (1973) [adjudication of delinquency, but withholding disposition]; State v. McMillan, 189 S.C. 444, 1 S.E.2d 626 (1939) [denial of motion quash indictment]; State v. Gellis, 158 S.C. 471, 155 S.E. 849 (1930) [overruling demurrer to an indictment]; State v. Turner, 118 S.C. 383, 110 S.E. 525 (1922) [denial of motion to quash indictment]; State v. Mason, 54 S.C. 240, 32 S.E. 357 (1899) [denial of motion to quash indictment]; State v. Burbage, 51 S.C. 284, 28 S.E. 937 (1898) [denial of plea in abatement]; State v. Hightower, 33 S.C. 598, 11 S.E. 579 (1890) [appeal prior to imposition of

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Md.App. 591, 473 A.2d 1311 (1984) (when prisoner released from incarceration upon expiration of term, he "stepped out from under the protective umbrella of the IDA" and stood in same position as any other accused); State v. Thompson, 19 Ohio App.3d 261, 483 N.E.2d 1207 (1984) (holding plain language of IAD making agreement applicable to persons serving "term of imprisonment" and statute's expressed purpose of facilitating rehabilitation support finding that IAD no longer applies once prisoner discharged from sending-state sentence); State v. Dunlap, 57 N.C.App. 175, 290 S.E.2d 744 (1982) (prisoner's release from sending-state sentence during 180–day period essentially nullifies stated purposes of IAD and, thus, its speedy trial provisions no longer applicable); State v. Destephano, 87 A.3d 361 (Pa.Super. 2014) (IAD does not apply once discharged from North Carolina sentence during 180 day period).

sealed sentence]; State v. McKettrick, 13 S.C. 439 (1880) [appeal after conviction, trial judge refused to sentence].

In State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct.App. 2003), the Court of Appeals determined that an alleged violation of the Interstate Agreement on Detainers did not deprive the trial court of subject matter jurisdiction. Respondent submits for this alternate reason that the appeal would have been interlocutory had it been timely filed and served, the motion to reinstate must be denied.

III.

WHEREFORE having made Return to the Motion to Reinstate, it must be dismissed.

Respectfully submitted,

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ATTORNEYS FOR RESPONDENT

By: _____
Donald J. Zelenka
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
SC Bar # 5758
803-734-6305

July 17, 2014

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CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served Respondents **Return to "Motion to Appeal the Order Dated June 16, 2014"** on:

Aaron Jay Carter
435 Wire Road
Aiken, SC 29801

Wallis A. Alves, Esquire
Second Circuit Public Defender's Office
Post Office Drawer 2247
Aiken, SC 29802

David W. Miller
Deputy Solicitor, 2nd Judicial Circuit
P. O. Drawer 3368
Aiken, SC 29802-3368

by depositing copies in the U.S. Mail with sufficient postage this 17th day of July, 2014.

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ALAN WILSON
ATTORNEY GENERAL

July 17, 2014

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State v. Aaron Jay Carter
Appellate Case No. 2014-000697

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the ***Return to "Motion to Appeal the Order Dated June 16, 2014"*** in the above-captioned matter for filing in your office. By copy of this letter, I am serving the Appellant with same.

Sincerely,

Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/lbb
Enclosure

cc: Aaron Jay Carter
Wallis A. Alves, Esquire
David W. Miller, Deputy Solicitor
Trisha Allen, Victims Assistance

S.C. Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211