

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 25 2015

Appeal from Greenville County
Letitia H. Verdin, Circuit Court Judge
Appellate Case No. 2012-208627

SC Court of Appeals

THE STATE,

Respondent,

v.

ANDREW T. LOOPER,

Appellant.

RETURN TO PETITION FOR REHEARING

On March 4, 2015, this Court issued a published opinion in which it dismissed Appellant's appeal of the circuit court's order reversing the magistrate's order dismissing his charge of driving under the influence (DUI). State v. Looper, Op. No. 5301 (S.C. Ct. App. filed March 4, 2015). Pursuant to Rule 221(a), SCACR, Appellant petitioned this Court for rehearing, and this Court requested that Respondent ("the State") file a return to Appellant's petition. For the following reasons, Appellant's petition for rehearing should be denied.

Appealability Issue

In his petition for rehearing, Appellant first contends that this Court erred in dismissing Appellant's appeal because he was an aggrieved party for the purposes of sections 18-1-30 and 18-9-10 of the South Carolina Code. In support of that contention, Appellant maintains that because the State appealed the magistrate's decision to the circuit court, appellate jurisdiction was properly vested in the circuit court and its decision was appealable by any aggrieved party.

(Pet. for Reh. p. 8). Contrary to Appellant's contentions, Appellant cannot appeal the circuit court's ruling without first being convicted and thus becoming aggrieved. Accordingly, this Court's decision to dismiss the appeal was correct.

Appellant argues appellate jurisdiction is proper in this case because once the State appealed the magistrate's ruling and that appeal was properly before the circuit court, State v. Gregorie¹ allowed Appellant to appeal to this Court as a statutory right pursuant to sections 18-1-30 and 18-9-10 of the South Carolina Code. Specifically, Appellant argues he was made an aggrieved party by the reversal and new trial remedy ordered by the circuit court and, thus, fit the rule clarified in Gregorie that "[a]ny aggrieved party may appeal the circuit court's final judgment." However, because this was not a final judgment, Appellant cannot appeal the circuit court's ruling without first being convicted and sentenced. Accordingly, this Court's decision to dismiss the appeal was correct because appellate jurisdiction is not proper in this case.

In its opinion, this Court correctly distinguished Gregorie from Appellant's case. This Court noted a new trial would have violated Gregorie's double jeopardy rights and, thus, made him aggrieved. However, this Court found Appellant "has not been convicted and is not similarly aggrieved." This Court then went on to examine the definition of "aggrieved," basing it on Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970), in which the Supreme Court held that "an aggrieved party is one who is injured in a legal sense; one who has suffered an injury to person or property."

As this Court noted, Appellant has not suffered any injury. He has not been convicted or sentenced. Therefore, this Court correctly found Appellant does not fit the definition of "aggrieved party" and did not have the right to appeal the circuit court's decision to this Court.

¹ 339 S.C. 2, 528 S.E.2d 77 (2000).

This Court analogized the order to an order denying a motion to suppress evidence, finding it is undoubtedly an interlocutory order and, thus, not appealable. Furthermore, “[o]ur supreme court has recognized: ““Avoidance of trial is not a “substantial right” entitling a party to immediate appeal of an interlocutory order.”” Pocisk v. Sea Coast Const. of Beaufort, 380 S.C. 584, 588-89, 671 S.E.2d 98, 101 (Ct. App. 2008) (quoting Shields v. Martin Marietta Corp., 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991)).

Therefore, this Court was correct in dismissing the appeal. Accordingly, Appellant’s petition for rehearing should be denied.

Merits Issue

In his petition for rehearing, Appellant next contends this Court’s decision to dismiss the case rather than address the merits deprives Appellant of due process. In support of that contention, Appellant submits the dismissal of the appeal means that the circuit court’s appellate decision will never be effectively subject to review. Additionally, he contends any later appeal will leave Appellant in a more burdensome position due to the standard of review and practical effect of this Court’s dismissal.

This Court was correct not to address the merits based on its determination that the issue before the Court was not appealable. To the extent this Court considers the merits in this Petition for Rehearing, the arguments in the State’s Brief are hereby incorporated by reference.

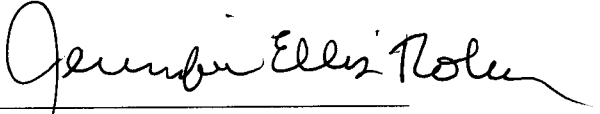
Conclusion

Based on the foregoing, coupled with the arguments raised in the Final Brief of Respondent, the State respectfully requests that Appellant’s petition for rehearing be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

By: 
Jennifer Ellis Roberts

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Return to Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, SC 29601

I further certify that all parties required by Rule to be served have been served.
This 25th day of March, 2015.



ANGELA BENNETT
Administrative Assistant

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ALAN WILSON
ATTORNEY GENERAL

March 25, 2015

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

RE: State v. Andrew T. Looper
Appellate Case No. 2012-208627

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Return to Petition for Rehearing, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/ab
Enclosures

cc: J. Falkner Wilkes, Esquire
Victim Services