

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Richland County  
Appellate Case No. 2014-002113

**RECEIVED**

APR 28 2016

**SC Court of Appeals**

THE STATE,

Respondent,

vs.

EARL O. GRAHAM,

Appellant.

**MOTION TO DISMISS APPEAL**

The State moves this Court to dismiss the *pro se* appeal filed by Appellant by showing the Court:

**I.**

It appears Appellant has not proceeded to trial but appeals the revocation of his pre-trial bond. (See *pro se* letter from Appellant dated November 24, 2014, and letters from Appellant's counsel dated October 9, 2014 and April 7, 2015, all of which are filed with this Court).

**II.**

It also appears that the *pro se* notice of appeal might have been filed simultaneously in the South Carolina Supreme Court and the South Carolina Court of Appeals and that two separate appellate case numbers were assigned. (See caption for *pro se* notice of appeal listing both appellate courts). The South Carolina Supreme Court dismissed Appellant's *pro se* appeal and denied Appellant's *pro se* motion to relieve his attorney by order dated October 16, 2014 for

appellate case number 2014-002107. (See exhibit 4 attached to the letter of Appellant's counsel dated April 7, 2015). The remittitur was issued on November 3, 2015.

### III.

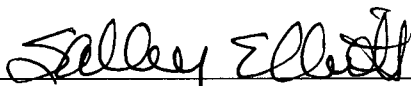
Respondent moves to dismiss the *pro se* appeal pending in the South Carolina Court of Appeals (Appellate Case No. 2014-002113) because the appeal appears to be a duplicate of the bond revocation appeal our Supreme Court has already considered and dismissed by order of October 16, 2014. Alternatively, Respondent moves to dismiss the *pro se* appeal pending before this Court on the ground that pre-trial orders granting or denying pre-trial bond are not directly appealable. 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 and this appeal is improper. Parsons v. State, 289 S.C. 542, 542, 347 S.E.2d 504, 504 (1986). Moreover, our Supreme Court has considered the appealability of orders respecting pre-trial bond and has ruled that pre-trial orders granting or denying pre-trial bond are not directly appealable. State v. Hill and Huggins, 314 S.C. 330, 444 S.E.2d 255 (1994).

**WHEREFORE**, the State respectfully asks this Court dismiss Appellant's *pro se* appeal from a pre-trial bond revocation hearing.

Respectfully submitted,

ALAN WILSON  
Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

BY:   
Salley W. Elliott  
S.C. Bar No: 1871

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ATTORNEYS FOR RESPONDENT

April 28, 2015

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THE STATE,

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Appellant.

**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the Motion to Dismiss Appeal on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to Earl O. Graham, 201 John Mark Dial Drive, Columbia, SC 29209, Robert M. Dudek, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211 and John Delgado, Esquire, P.O. Box 7965, Columbia, South Carolina 29202

I further certify that all parties required by Rule to be served have been served.

This 28<sup>th</sup> day of April, 2015.

  
ANGELA BENNETT  
Administrative Assistant

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727



April 28, 2015

ALAN WILSON  
ATTORNEY GENERAL

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

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APR 28 2015  
SC Court of Appeals

Re: The State v. Earl O. Graham  
Appellate Case No: 2014-002113

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Motion to Dismiss Appeal along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott  
Senior Assistant Deputy Attorney General  
S.C. Bar No: 1871

SWE/ab  
Enclosures

cc: Earl O. Graham  
John Delgado, Esquire  
Robert M. Dudek, Esquire  
Ms. Trisha Allen