

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Carmen T. Mullen, Circuit Court Judge
Appellate Case No. 2014-001692

RECEIVED
JUN 05 2015
SC Court of Appeals

THE STATE,

Respondent,

vs.

BRYAN REARICK,

Appellant.

MOTION TO DISMISS APPEAL AS INTERLOCUTORY

The State moves this Court to dismiss the above captioned appeal as interlocutory, and not immediately appealable. The basis for this Motion are:

1. The appeal is from an order denying Appellant's motion to bar prosecution on Double Jeopardy grounds following the circuit court's *sua sponte* entry of a mistrial during a bench trial. The underlying criminal case has not been called for re-trial, and Appellant is not currently incarcerated pending trial.

2. 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). See also State v. Isaac, 405 S.C. 177, 747 S.E.2d 677 (2013) (denial of immunity under Protection of Persons and Property Act is interlocutory and not immediately appealable) (citing Miller).

3. Appellant’s case has not been called for trial in the circuit court, he has not been convicted, and no sentence has been imposed. Accordingly, the order at issue in this appeal is not a final order, and not immediately appealable.

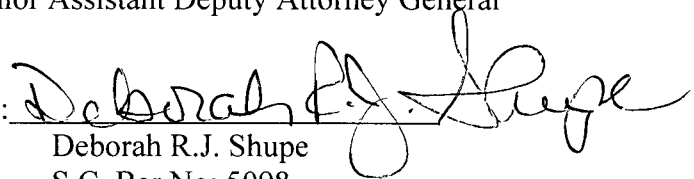
Based on the foregoing, the State respectfully asks this Court to dismiss this appeal as interlocutory and not immediately appealable.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

BY:



Deborah R.J. Shupe
S.C. Bar No: 5098

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ATTORNEYS FOR RESPONDENT

June 5, 2015

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PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Motion to Dismiss Appeal as Intertocutory on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211

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

This 5th day of June, 2015.



SALLY B. ELLISON
Legal Assistant

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Columbia, SC 29211
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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

June 5, 2015

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

Re: The State v. Bryan Rearick
Appellate Case No: 2014-001692

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Motion to Dismiss Appeal as Interlocutory, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General
S.C. Bar No: 5098

SWE/ab
Enclosures

cc: Robert M. Dudek, Chief Appellate Defender
Victim Services