STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2015-001779

THE STATE,

Respondent,

vs.

QUENTIN RAYMAR PRICE,

Appellant.

MOTION TO DISMISS APPEAL

Respondent, by and through undersigned counsel, respectfully moves to dismiss Appellant's appeal because Appellant is not an aggrieved party as is required by Rule 201(b), SCACR, and S.C. Code Ann. § 18-1-30 (1976).

I.

Appellant was charged with a magistrate's court offense of criminal domestic violence, first offense, and was released on bail on November 30, 2013, subject to the condition that Appellant refrain from contact with the victim. The State subsequently sought a bench warrant from the magistrate based upon Appellant's breach of that condition. A bench warrant was issued and hearing held by the magistrate on the issue of Appellant's contempt of court for violating

conditions of bail. Appellant moved to vacate the bench warrant which was denied by the magistrate. Appellant also objected to the procedural method used to initiate the criminal contempt proceedings but the objections were overruled. The magistrate found Appellant in criminal contempt of court for violating conditions of bail and imposed a criminal sentence.

Appellant appealed to the Lexington County Court of Common Pleas. A hearing respecting the appeal was convened before the Honorable William P. Keesley. Judge Keesley issued an order finding that magistrates have the power to cite and punish a defendant for constructive contempt of court for violating conditions of bail concerning an offense within the jurisdiction of summary courts but that use of the bench warrant in this particular case was improper because exigent circumstances were not established to support an immediate arrest. Judge Keesley concluded that the contempt proceeding conducted in this case lacked the proper procedural framework and failed to provide Appellant with the opportunity to be heard. Judge Keesley granted Appellant's appeal, overturned the criminal contempt determination by the magistrate, and vacated Appellant's criminal contempt sentence. Judge Keesley's order was dated September 30, 2014, and judgment was entered on October 7, 2014. The information on the judgment form indicates that a copy of the order was mailed by the Lexington County Clerk of Court to counsel for the parties on October 7, 2014.

II.

On October 14, 2014, Appellant filed and served Notice of Appeal from the portion of Judge Keesley's order finding that the magistrate had "jurisdiction to punish a defendant for contempt of court for violating a condition of the defendant's bond." (See Appellate Case No. 2014-002208). On October 17, 2014, Respondent filed and served a timely petition for rehearing

in the Lexington County Court of Common Pleas asking Judge Keesley to reconsider his order, to alter or amend the findings, and to affirm the finding of contempt. Appellant submitted a reply to the petition on October 22, 2014.

Respondent moved this Court to dismiss Appellant's appeal on the ground Appellant was not an aggrieved party and, alternatively, to remand the case to the Lexington County Court of Common Pleas for a ruling on the outstanding and timely request to rehear or reconsider the order on appeal. On April 24, 2015, Appellant submitted a Return to Respondent's Motion to Dismiss Appeal or Remand. On June 5, 2015, this Court dismissed the appeal without prejudice and remanded the case to the circuit court for a ruling on the outstanding motion to reconsider. This Court did not address the issue whether dismissal of the appeal was warranted because Appellant was not an aggrieved party. The case was remitted to the Lexington County Court of Common Pleas.

Upon remand to the circuit court, Respondent withdrew its petition for rehearing. On August 5, 2015, Judge Keesley issued a Form 4 Judgment of a Civil Case finding that the petition for rehearing was withdrawn. Appellant again filed and served Notice of Appeal from the portion of Judge Keesley's earlier order finding that the magistrate had "jurisdiction to punish a defendant for contempt of court for violating a condition of the defendant's bond" in a case within the magistrate's trial jurisdiction. This appeal is currently pending before this Court.

III.

The order appealed by Appellant overturns Appellant's criminal contempt sanction and vacates the associated criminal contempt sentence. Respondent moves this Court to dismiss the appeal on the ground Appellant is not an aggrieved party and cannot appeal the order which

resulted in his criminal contempt sanction and sentence being vacated.

"The right to appeal a criminal conviction is conferred by section 14-3-330 of the South Carolina Code [1977 & Supp. 2014]." State v. Isaac, 405 S.C. 177, 181, 747 S.E.2d 677, 679 (2013). "Rule 201(b), SCACR 'limits the ability to appeal to '[o]nly a party aggrieved by an order, judgment . . . or decision . . . .' This court has previously explained that under Rule 201(b), '[t]he word 'aggrieved' refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation." Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 665 S.E.2d 237 (Ct.App. 2008), citing Beaufort Realty Co. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct.App. 2001). "An aggrieved party is aggrieved by a judgment or decree when it operates on **his or her** rights of property or **bears directly on his or her** interest." Beaufort Realty Co. v. Beaufort County, at 301, 551 S.E.2d at 589 (emphasis added); see also Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 665 S.E.2d 237 (Ct.App. 2008) (stating bank is not an aggrieved party necessary to initiate an appeal from an order where the bank was not a party to the severed action, had no interest in the escrowed funds, and was not aggrieved by the trial court's apportionment of the funds between plaintiffs). "A party . . . cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person." Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970); First Union Nat. Bank of South Carolina v. Soden, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct.App. 1998); see also Burns v. Gardner, 328 S.C. 608, 493 S.E.2d 356 (Ct.App. 1997) (stating that appellant may not challenge the imposition of sanctions against his attorney because the attorney and not appellant is aggrieved by the assessment of sanctions). "The law recognizes that that despite having been a 'winning' party below, a party can still be aggrieved by a judgment

of the court. See Cobb v. Benjamin, 325 S.C. 573, 580, 482 S.E.2d 589, 592-93 (Ct.App. 1997). However, "a mere interest in a problem is not enough" to establish that an appellant suffered an individualized injury. Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 551 S.E.2d 588 (Ct.App. 2001), citing Carolina Alliance for Fair Employment v. S.C. Dep't of Labor, Licensing & Regulation, 337 S.C. 476, 487, 523 S.E.2d 795, 800 (Ct.App. 1999).

Our supreme court 'has held that, generally, a criminal defendant may not appeal until sentence is imposed.' Id. at 183, 747 S.E. 2d at 660." State v. Looper, 412 S.C. 363, 364, 772 S.E.2d 516, 516 (Ct.App. 2015); State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986) (same); see also State v. Timmons, 68 S.C. 258, 47 S.E. 140 (1904) (stating that a criminal defendant may not appeal except from the final criminal sentence); Reed v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (same). Once an appeal is properly before the circuit court from magistrate's court and the circuit court renders its final judgment, the right to appellate review thereafter is controlled by statute. Only an aggrieved party may appeal the circuit court's order. See Rule 201 (b), SCACR; S.C. Code Ann. §18-1-30 (2014); S.C. Code § 18-9-10 (2014); State v. Gregorie, 339 S.C. 2, 528 S.E.2d 77 (2000); State v. Looper, at 364, 772 S.E.2d at 516. In State v. Gregorie, our supreme court opined that a criminal defendant may only appeal as an aggrieved party from a circuit court order vacating a magistrate's court conviction and sentence when the case is remanded by the circuit court for a new trial and the facts of the particular case reflect that the new trial would violate the **defendant's right** against double jeopardy because the State did not appeal the circuit court's finding that the State failed to meet its burden of proof.

The order in question overturns the finding of criminal contempt entered against Appellant and vacates Appellant's criminal contempt sentence without ordering a new contempt proceeding.

All of the magistrate's court charges arising from and related to this incident have been resolved and Respondent has not and will not revisit the violation by Appellant of the bail condition which resulted in the now overturned contempt sanction. Appellant suffers no injury from the order he appeals. The order does not deny a personal or property right of Appellant, impose a burden or obligation upon Appellant, or bear directly on Appellant's interest in the case before this Court on appeal. As was stated in our supreme court in Cisson v. McWhorter, 255 S.C. 174, 177 S.E.2d 603 (1970):

> Our statutory provision limiting appellate review to those who have been aggrieved by the judgment below is, in our opinion, a wise and well reasoned requirement, as our court is concerned with correcting errors that have practically wronged the appealing party. It, therefore, follows that it is our duty to reject an appeal that is prosecuted by a party who is not aggrieved in a legal sense by the judgment of the trial court. Cisson v. McWhorter, at 177 – 78; 177 S.E.2d at 605.

"This Court is concerned with correcting errors that have practically wronged the appealing party and, where, as here, the appeal is prosecuted by a party who is not aggrieved in the legal sense by the order below, it becomes (the appellate court's) duty to reject that appeal." Knight v. Autumn Co., Inc., 271 S.C. 112, 115, 245 S.E.2d 602, 604 (1978), citing Cisson v. McWhorter, 255 S.C. 174, 177 S.E.2d 603 (1970). The order on appeal vacates the criminal contempt finding and sentence and ends the matter. There can be no benefit or improvement in **Appellant's position** should this Court consider and reverse the contempt finding and sanction on the alternative ground advanced by Appellant. In actuality, Appellant urges this Court to consider arguments he wishes to advance on appeal for the benefit of future litigants and speculates as to the findings and outcome of those future proceedings. Appellant asks this Court for an improper advisory opinion on a matter that may or may not arise in future proceedings but that will have no impact on him. This is

contrary to the law. See Bivens v. Knight, at 13, 173 S.E.2d at 150 ("A party, therefore, cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person."). The contempt proceedings regarding Appellant's bail violation has been declared a nullity. The ground Appellant advances for consideration on appeal, at most, is a matter for another litigant on another day. Appellant cannot appeal an issue which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other defendant at some later time. Appellant is not an aggrieved party within the meaning of the law and his appeal is not proper. See Dunson v. Dunson, 278 S.C. 210, 294 S.E.2d 39 (1982)(Wife is not an aggrieved party where wife sought a divorce and the family court granted it on the ground of separation for one year as opposed to desertion and wife was not prejudiced by the determination. The award of the divorce on the ground of separation for one year did not deny wife any personal or property right nor did it impose a burden or obligation on wife).

This Court must dismiss Appellant's appeal because it was initiated by a party who is not aggrieved as designated by law. Cisson v. McWhorter, at 174, 177 S.E.2d at 603.

WHEREFORE, Respondent moves this Court to dismiss Appellant's appeal.

Respectfully submitted,

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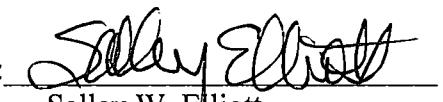
BY: 

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October 23, 2015

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Motion to Dismiss Appeal by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorneys, Jael D. Gilreath, Esquire, 407 ½ West Main Street, Lexington, South Carolina 29072 and Robert M. Dudek, Chief Appellate Defender, P. O. Box 11589, Columbia, S.C. 29211.

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

This 23rd day of October, 2015.

ANGELA BENNETT
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