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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2016-000729

THE STATE,

Respondent,

vs.

TERRANCE EDWARD STEWART,

Appellant.

MOTION TO DISMISS APPEAL

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

In June of 2015, the Laurens County Grand Jury indicted Appellant Terrance Edward Stewart for one count of trafficking in heroin, one count of distribution of heroin, and one count of possession of oxycodone with the intent to distribute. Prior to trial, Appellant filed a motion seeking for those indictments to be dismissed based on an alleged double jeopardy violation. On March 28, 2016, a pre-trial hearing was conducted on the motion in the Laurens County Court of General Sessions with the Honorable Donald B. Hocker, circuit court judge, presiding. At the conclusion of the hearing, the circuit court judge issued an order denying Appellant’s motion. Appellant then immediately filed a notice of appeal appealing the circuit court judge’s pre-trial order rejecting his double jeopardy claim.

II.

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 Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (“An appeal ordinarily may be pursued only after a party has obtained a final judgment.”); Miller, 289 S.C. at 427, 346 S.E.2d at 706 (“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. Parsons v. State, 289 S.C. 542, 542, 347 S.E.2d 504, 504 (1986); see State v. Timmons, 68 S.C. 258, 259, 47 S.E. 140, 141 (1904) (“[A] defendant in a criminal case cannot appeal except from the final sentence imposed by the Court.”).

III.

In the case sub judice, Appellant is appealing from the circuit court judge’s order denying his motion for dismissal based on an alleged double jeopardy violation. However, Appellant’s case has not yet gone to trial, and Appellant has not yet been convicted or sentenced on the indictments he moved to dismiss prior to trial. See Wilson, 387 S.C. at 603, 693 S.E.2d at 926 (recognizing the general rule is a criminal defendant cannot appeal until he has been convicted and sentenced). Moreover, as our courts have historically and consistently recognized time and time again, a criminal defendant in South Carolina **cannot** properly appeal from a pre-trial order


denying a motion to dismiss a case based on alleged double jeopardy violation. See Miller, 289 S.C. at 427, 346 S.E.2d at 706 (“[A]n order denying a double jeopardy claim is **not immediately appealable.**” (emphasis added)); see also State v. Isaac, 405 S.C. 177, 184, 747 S.E.2d 677, 680 (2013) (recognizing “the denial of a motion to dismiss a criminal case on the ground of double jeopardy . . . is not immediately appealable”); State v. Gregorie, 339 S.C. 2, 4, n. 1, 528 S.E.2d 77, 78 (2000) (“[W]e have clearly held that a criminal defendant claiming a double jeopardy violation is not exempt from the regular appealability requirements.”); State v. Wyatt, 115 S.C. 325, 325-326, 105 S.E. 704, 704 (1921) (finding a challenge to a double jeopardy ruling was not immediately appealable because no final judgment had been obtained). As a result, Appellant’s appeal is an improper interlocutory appeal from an order that is not immediately appealable and must be dismissed, and Appellant’s case should be immediately remanded for trial. See State v. Hubbard, 277 S.C. 568, 569, 290 S.E.2d 817, 817 (1982) (“No final judgment has occurred in this case and the order appealed from is interlocutory. Therefore, we dismiss the appeal and remand the case for trial.” (citation omitted)); see also State v. Burbage, 51 S.C. 284, 287, 28 S.E. 937, 938 (1898) (“To allow appeals to be heard from such preliminary rulings would enable a party charged with the most serious crime always to secure a continuance, when not otherwise entitled to it, by simply moving to quash the indictment, and, when his motion is overruled, give notice of appeal from such ruling, and thereby stop the trial, as was the case in the present instance. Both reason and authority require us to hold that this appeal is premature, and must therefore be dismissed.”); cf. Isaac, 405 S.C. at 187, 747 S.E.2d at 682 (“[B]ecause the denial of a defendant’s request for immunity under the [South Carolina Protection of Persons and Property] Act is an interlocutory order not subject to immediate appeal, this appeal is dismissed and the matter is remanded for trial.”).

WHEREFORE, Respondent prays this Court will dismiss Appellant's appeal as an improper interlocutory appeal from an order that is not immediately appealable; remand the case to the circuit court for trial; hold this appeal in abeyance pending a ruling on Respondent's motion; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

By: 
Mark R. Farthing

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April 22, 2016

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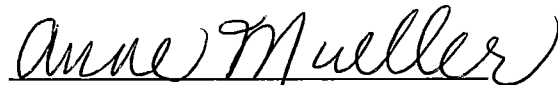
Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Motion to Dismiss Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646

I further certify that all parties required by Rule to be served have been served.
This 22nd day of April, 2016.



ANNE A. MUELLER
Legal Assistant

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ALAN WILSON
ATTORNEY GENERAL

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April 22, 2016

C. Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646

RE: State v. Terrance Edward Stewart – Appellate Case No. 2016-000729

Dear Mr. Wise:

I am enclosing two copies of the Motion to Dismiss Appeal in the above-referenced case. Please be advised I will be representing the State in this matter going forward, and I respectfully ask you forward all future correspondence regarding this matter directly to me. Thanks, and I look forward to working with you on this case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar No. 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original and six copies enclosed).
Victim Services