THE STATE OF SOUTH CAROLINA

In the Supreme Court

ON PETITION FOR WRIT OF CERTIORARI

From Richland County Court of Common Pleas

The Honorable Tanya A. Gee, Circuit Court Judge

Case No: 16-000975

The State

Respondent,

v.

Brian Talkington

Petitioner,

RESPONDENT'S APPENDIX

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STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	Case No.: 2014-CP-40-7362
COUNTY OF RICHLAND	)	
	)	
THE STATE	)	
	)	
	)	
VS.	)	ORDER
	)	
	)	
BRIAN DARRELL TALKINGTON	)	

This matter was scheduled for a Jury Trial at Richland County Central Court on February 26, 2013. Present at the trial were Assistant Solicitor Shelia Mims (hereinafter "The State" or "Ms. Mims) and witnesses. Also present at the trial was the defendant Brian Darrell Talkington with his Attorney (s), Douglas Trustlow, Esq. (hereinafter "Defense" or "Mr. Trustlow"). Based upon the testimony presented at trial, I make the following findings of fact and law.

Jurisdiction

This is a Criminal Domestic Violence (CDV 1st) allegation against Mr. Talkington, and this Court has jurisdiction pursuant to S.C. Code Ann. § 22-3-550.

Motion Hearing

It is undisputed that a jury venire was qualified and a panel was selected by both parties. While waiting for a courtroom to be assigned, the court entertained any motions and issues before the trial. The defense requested, in a motion, that the Criminal Domestic Violence 1st offense against Brian Talkington be dismissed because the State did not properly remand the Criminal Domestic Violence 2nd charge against their client, Mr. Talkington. Then the defense further suggested the court had no jurisdiction in this matter because it should still be a second offense. The state's argument was "it has always been done that way" and wanted to proceed with the jury trial. Both arguments were heard by the court regarding a motion to dismiss, prior

to the jurors being sworn. The court was advised by both parties that a preliminary hearing was held and the CDV 2nd was bound over and sent to General Sessions Court.

Conclusion

The court agreed with the defense that the Criminal Domestic Violence case was not properly remanded by the Solicitor's office, lacking a signature by a Circuit Court Judge. The court ordered the case to be sent back to the Circuit Court as this court no longer had jurisdiction as it was a Criminal Domestic Violence 2nd (CDV 2nd) (16-25-20 (2), over the state's objection.

AND IT IS SO ORDERED.

The Honorable Tomothy C. Edmond
Presiding Judge
Richland County Magistrate's Court

May 8th, 2015

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE RICHLAND COUNTY CRIMINAL COURT
THE STATE OF SOUTH CAROLINA	)	
VS.	)	ORDER Warrant # 2013A4010601092
BRIAN DARRELL TALKINGTON	)	

This matter came before the Court, on October 14, 2014, on Defendant's Motion to Dismiss the charge of Criminal Domestic Violence, based upon double jeopardy. Previously, prior to a jury trial, in a hearing before Judge Tomothy Edmond, the Court ruled that the Magistrate's Court did not have jurisdiction to hear the case as it was originally charged as a Criminal Domestic Violence 2nd offense and was not properly remanded or recharged so as to give the Magistrate's Court jurisdiction. The Defense maintains that jeopardy attached at the proceeding, and as a result, the charge should be dismissed.

It is this Court's opinion that jeopardy does not attach in a proceeding where the court lacks jurisdiction. See State v. Whetstone, S.C. 376, 510 S.E. 2nd 225, 1998. See also State v. Howell, 220 S.C. 178, 66 S.E. 2nd 701 "1951". Therefore, Defendant's Motion is denied.

And it is so ordered this 16 Day of October, 2014

Kirby D. Shealy 5019
Magistrate, Richland County

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
COUNTY OF RICHLAND	)	CRIMINAL COURT
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
	)	ORDER
VS.	)	WARRANT # 2013A4010601092
	)	
BRIAN DARRELL TALKINGTON	)	
	)	

This matter is before the Court on the Defendant's Motion to Reconsider or Vacate this Court's previous order dated October 16, 2014. The Defendant asserts that the court failed to consider the Defendant's argument that he was prejudiced because the transcript of the hearing before Judge Tomothy Edmond was not preserved. The Defendant further argues that the State did not appeal Judge Edmond's ruling as the Solicitor indicated she would do, resulting in the tape of the proceeding being destroyed. It appears to the Court that the only disagreement between the parties as to what the transcript of the tape would reflect is whether or not the jury was sworn prior to Defendant's Motion to Dismiss, or whether Defendant's Motion was heard, as if, the jury had been sworn, so that jeopardy would have attached. Judge Edmond ruled that the Magistrate's Court did not have jurisdiction to try the case as it was a second offense Criminal Domestic Violence charge which was not properly remanded to the Magistrate's Court. Even if it was undisputed that the jury had been sworn, State V. Whetstone (cited in this court's order dated October 16, 2014) makes it clear that Defendant's double jeopardy argument is without merit, as jeopardy does not attach in a proceeding where the court lacks jurisdiction. Therefore, I find no prejudice to the Defendant from the loss of the tape.

Defendant raises, for the first time today, that he is prejudiced by delay caused by the Solicitor stating she would appeal and then not doing so. The Defendant claims that a witness may no longer be available as a result of the delay. As this issue was not previously raised in the hearing before the undersigned, this court finds it is not a proper basis for a Motion to Reconsider, but could be addressed pretrial when the case is back on the jury docket.

For the foregoing reasons, Defendant's Motion is denied.

And it is so ordered this 17 day of November, 2014

Kirby D. Shealy
Magistrate, Richland County
Richland County Central Court
1400 Huger Street, Columbia, SC 29201

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

2014-CP-40-7362

THE STATE,

Respondent,

vs.

BRIAN TALKINGTON,

Appellant.

ORDER

This matter came before the court on March 6, 2015 by way of an appeal from Summary Court. Present for the State was Joseph Shenker, Assistant Solicitor. The Appellant, Brian Talkington, was represented by attorneys Douglas Truslow and Neal Truslow.

Appellant Talkington seeks a reversal of the Order(s) of the lower court dated October 16, 2014 and November 17, 2014, the latter Order being a denial of a motion for reconsideration. In the alternative, Appellant seeks an Order remanding the case to the lower court so that a proper, reconstructed record can be attempted for appellate purposes.

When questioned, Appellant's counsel detailed the following procedural history: On July 11, 2011, Appellant ("Talkington") was arrested and charged with the statutory offense of Criminal Domestic Violence (CDV), second offense [sic]. He was so charged and the case initially proceeded despite Talkington's continuous contention that there was no predicate CDV conviction to vest jurisdiction with the Court of General Sessions Court. See S.C. Code Ann. § 16-25-20 (B)(1)(2).

The State thereafter conceded that Talkington had no predicate first offense conviction. However, rather than dismissing the case for lack of jurisdiction and properly

charging Talkington with an offense within the jurisdiction of the Summary Court (*to-wit*, CDV, first offense), the State unilaterally attempted to "remand" the case and call it for trial on February 26, 2013. A Summons was issued indicating that if Talkington did not appear he would be subject to being tried and convicted in his absence. Defendant appeared for trial with counsel and witnesses. The State appeared for trial with counsel and witnesses and indicated its intent to proceed with the trial. A jury venire was qualified and a panel was selected. While a suitable courtroom for trial was being arranged, Talkington agreed to have his Motion to Dismiss heard upon the condition that it was heard as if the jury were sworn, such that jeopardy would attach.[1] The Court (Summary Court Judge Edmond) heard Talkington's Motion, and then dismissed the case over the State's objection. The State repeatedly (mis)represented thereafter, verbally and in writing, that it was appealing the dismissal of the case. The State did not, in fact, appeal but failed to timely communicate that circumstance to Talkington and, as a direct consequence, the time expired for preservation of the audio recording and other record of the court proceedings that led to the dismissal.

On November 21, 2013, the State had Talkington rearrested, this time on a statutory charge of CDV, first offense (for the same incident giving rise to the initial charge that had been dismissed at trial on February 26, 2013).

The case was then set for a pre-trial hearing before Summary Court Judge Stroman on July 24, 2014. Talkington submitted that he was being subjected to double jeopardy and/or due process violations and that the record of proceedings before Judge Edmond must be reconstructed in order to advance his arguments. The State agreed to that process, and it was ordered that the matter was to be sent to Judge Edmond to attempt to reconstruct a suitable record of what had transpired before him.

On or about October 16, 2014, another pre-trial hearing was set. However, instead of the matter being set before Judge Edmond, it was set before Summary Court Judge Shealy, who had had nothing to do with the case at that point. Instead of then referring the matter to Judge Edmond, Judge Shealy ruled that the relief sought by Talkington was not well founded and that the case would proceed to trial. Based on that ruling, Talkington appealed.

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[1] The State had demanded a jury trial; Talkington was willing to have the case tried by a Judge alone.

... . It is elementary that both a defendant and this Court are entitled to have a record available for constitutional and appellate purposes. There is currently an inadequate record, through no fault of Appellant Talkington or his counsel.

Good cause having been shown, the relief sought by Appellant is granted, *to wit*: the matter is and shall be remanded to the lower court to be set before Judge Edmond so that a proper record for appellate purposes may be attempted.

IT IS THEREFORE ORDERED, the matter is and shall be remanded to Judge Edmond for the purposes of attempting to reconstruct a record of what had transpired relative to the initial dismissal of the case on February 26, 2013. This Court is mindful of the extended passage of time that has elapsed. In the event Judge Edmond is unable to reconstruct the record due to the passage of time and/or a fundamental disagreement between the parties and/or an inability to recall precise events, that shall be reported to the Court.

The appeal shall remain stayed pending remand and a good faith attempt to reconstruct the record and its submission to this Court.

AND IT IS SO ORDERED.

J. ERNEST KINARD, JR.
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina
April 16, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
STATE,	)	Case Numbers: 2015-GS-40-01723; [redacted];
	)	
v.	)	2013A4010601092;
	)	and I902097
BRIAN TALKINGTON,	)	
	)	**ORDER DENYING MOTION TO DISMISS, TO QUASH, FOR INJUNCTIVE RELIEF, FOR WRIT OF PROHIBITION, OR FOR WRIT OF MANDAMUS**
Defendant.	)	

Hearing Date: September 9, 2015
Attorneys for the State: Hans Pauling and Joseph Shenkar
Attorneys for Defendant: Douglas Truslow and Neal Truslow

This matter is before me on Defendant Brian Talkington's Motion to Dismiss, to Quash, for Injunctive Relief, for a Writ of Prohibition, or for a Writ of Mandamus. The essence of Talkington's motion is that this Court should prohibit the State from trying Talkington for Criminal Domestic Violence (CDV) of a High an Aggravated Nature (HAN) because the magistrate court previously dismissed a CDV charge against Talkington based on the same facts. After carefully considering the written submissions of counsel, the case files in 2015-GS-40-01723 and 2014-CP-40-07362, and arguments from counsel, Talkington's motion is respectfully denied for the reasons that follow.

BACKGROUND

The State initially charged Talkington with CDV 2nd offense on July 11, 2011. This was an error because Talkington had no predicate CDV 1st offense. Upon realizing this mistake, the State remanded the case to the magistrate court, but it did so without petitioning the circuit court, as required by section 22-3-545(B) of the South Carolina

Code. According to Talkington, he repeatedly brought this error to the State's attention, but the State forged ahead.

A jury trial in the magistrate's court was set for February 26, 2013. On the day of trial, a jury venire was qualified by the magistrate, and the parties selected a jury. Thereafter, Talkington moved to dismiss based, at least in part, on the magistrate's lack of jurisdiction over a CDV 2nd indictment that had not been properly remanded. According to Talkington, he made this motion after the State and the magistrate judge agreed that the motion would be heard as if the jury had been sworn. The magistrate, Judge Edmond, granted Talkington's motion to dismiss.

After the magistrate dismissed the case, Assistant Solicitor Sheila Mims emailed Talkington's attorney and informed him that the she intended to appeal the magistrate's dismissal. However, the State did not appeal. Instead, approximately nine months after Judge Edmond's dismissal, the State *nolle prossed* the CDV 2nd indictment and charged Talkington with a CDV 1st offense, based on the same set of facts.

A different magistrate, Judge Stroman, held a pre-trial hearing on the CDV 1st charge. At the hearing, Talkington argued: (1) the new indictment should be dismissed based on double jeopardy and other constitutional grounds, (2) the procedural history should be presented to the magistrate judge who issued the warrant for CDV 1st, or (3) the matter should be referred to Judge Edmond. Judge Stroman referred the matter back to Judge Edmond; however, for reasons unknown, a second pre-trial hearing was set before a third magistrate, Judge Shealy.

Judge Shealy denied Talkington's motion to dismiss. Specifically, Judge Shealy found that because the magistrate court did not have jurisdiction over the initial charge for CDV 2nd, jeopardy did not attach.

Talkington appealed Judge Shealy's order to the circuit court, and Judge Kinard heard the appeal on March 6, 2015. At the hearing, Judge Kinard orally announced that the matter would be remanded to the magistrate court so that Judge Edmond could attempt to reconstruct the record of the motion to dismiss from February 26, 2013.

On April 8, 2015, before Judge Kinard had reduced his order to writing, Solicitor Hans Pauling indicted Talkington on a charge of CDVHAN, based on the same underlying facts. On May 8, 2015, Judge Edmond issued an order attempting to reconstruct the record.[1] In the order, Judge Edmond stated, among other things, that the CDV 2nd case was not properly remanded to the magistrate court because it lacked a signature from a circuit court judge, and as a result, the case remained one for CDV 2nd, a crime over which the magistrate did not have jurisdiction.

Talkington filed this motion to dismiss, to quash, for injunctive relief, for a writ of prohibition, or for a writ of mandamus on May 12, 2015.

LAW/ANALYSIS

I. Collateral Estoppel/Double Jeopardy

Talkington first argues the CDVHAN indictment should be dismissed based on the doctrine of collateral estoppel because the April 2015 indictment is the State's "third attempt to perfect a charge relating to the exact same conduct occurring on July 4, 2011 . . . [, and it is] the third different charge the State has referred against Talkington (CDV

[1] The parties did not receive this order until September 1, 2015.

2nd Offense, CDV 1st Offense, and now CDVAN) arising out of the exact same nucleus of operative facts." (emphasis in original)

Collateral estoppel prevents a party from relitigaating an issue that has already been decided in a previous action. *See State v. Hewins*, 409 S.C. 93, 106, 760 S.E.2d 814, 821 (2014). "[C]ollateral estoppel in the criminal context is derived from the Fifth Amendment Double Jeopardy Clause, which forbids any person from being 'twice put in jeopardy of life or limb.'" *Id.* at 107, 760 S.E.2d at 821 (quoting *Ashe v. Swenson*, 397 U.S. 436, 442 (1970)).

The Double Jeopardy Clause provides three safeguards: "(1) protection from prosecution for the same offense after acquittal; (2) protection against prosecution for the same offense after conviction; and (3) protection from multiple prosecution for the same offense after an improvidently granted mistrial." *State v. Kirby*, 269 S.C. 25, 27-28, 236 S.E.2d 33, 34 (1977). "[O]ne is in jeopardy when a legal jury is shown and impaneled to try [a defendant] upon a valid indictment in a competent court." *State v. Stephenson*, 54 S.C. 234, 32 S.E. 305 (1899).

Here, even though the parties dispute whether they had an agreement to proceed "as if the jury was sworn" prior to hearing Talkington's motion to dismiss, there is no dispute that Judge Edmond determined the magistrate's court was not "a competent court" in which to try the case because the charge for CDV 2nd had not been properly remanded. Thus, jeopardy did not attach, and the ultimate issue of Talkington's guilt was never litigated.

II. Destruction of Evidence

Talkington next argues this case should be dismissed with prejudice because the State's actions have caused the destruction of the transcript from his motion to dismiss and that evidence was central to Talkington's argument. However, even assuming the transcript would reveal that the State had agreed to allow Talkington's motion to be heard "as if the jury had been sworn," jeopardy still would not have attached because the magistrate lacked subject matter jurisdiction over the CDV 2nd offense indictment. *Cf. State v. Whetstone*, 333 S.C. 376, 377, 510 S.E.2d 225, 226 (Ct. App. 1998) ("Absent compliance with 1993 S.C. Acts 174 section 1(B) [now codified as section 22-3-545(B)], the magistrate's court would have lacked jurisdiction of the subject matter to dispose of charges for second offense ill-treatment of animals . . . ."). Accordingly, the lack of a transcript does not make a difference to Talkington's double jeopardy argument, and in the words of Chief Judge Alex Sanders, "whatever doesn't make any difference, doesn't matter." *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987).

III. Prohibiting the State from Prosecuting Talkington for CDVHAN

Finally, Talkington asks this Court to enjoin the State from pursuing its indictment for CDVHAN, because the State was using it as a vehicle to circumvent the order of remand issued by Judge Kinard.[2] However, even though the State's indictment for CDVHAN *might* have circumvented the remand, in reality, it did not. Judge Edmond issued an order in response to the remand, setting forth his recollection of events. The order confirmed that Judge Edmond had dismissed the case because the magistrate court

[2] In the alternative to an injunction, Talkington asks this Court to issue a Writ of Prohibition or a Writ of Mandamus to prevent the State from prosecuting the indictment for CDVHAN. These requests are also denied as they are based on the same reasons addressed in section III of this order.

lacked subject matter jurisdiction over the indictment. Thus, an injunction is not necessary because the circuit court's order was not circumvented. Moreover, the circuit court itself was without jurisdiction to hear the appeal from Judge Shealy's order denying Talkington's motion to dismiss because such an order is not subject to an immediate appeal. *See, e.g., State v. Miller*, 289 S.C. 426, 427, 346 S.E.2d 705, 706 (1986) ("[A]n order denying a double jeopardy claim is not immediately appealable.").

CONCLUSION

Based on the foregoing reasons, Talkington's motion is denied. Case number 2014-CP-40-07362 (the appeal from Judge Shealy's order denying Talkington's motion to dismiss) is ended.

AND IT IS SO ORDERED.

Tanya A. Gee

October 12, 2015

BOOK 267 OF 0179

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
		Case No.: 2015-GS-40-1723; 2014-CP-40-07362
The State of South Carolina,	)	2013A4010601092; and I902097
	)	
-vs-	)	ORDER DENYING MOTION
	)	FOR RECONSIDERATION
Brian Talkington,	)	
	)	
Defendant.	)	

Defendant Brian Talkington has filed a Motion to Reconsider or to Vacate this Court's Order dated October 12, 2015. After careful consideration, the Defendant's motion is respectfully denied.

AND IT IS SO ORDERED.

Tanya A. Gee, Judge

October 26, 2015

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 24, 2015

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Re: The State v. Brian Talkington
Appellate Case No. 2015-002331

Dear Counsel:

This Court has received a notice of appeal from the appellant. A preliminary review of the order(s) challenged on appeal indicates it might not be appealable.

Accordingly, it is requested that you serve and file a memorandum addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the Court's consideration of the memorandum.

Very truly yours,

CLERK

cc: Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Tanya A. Gee, Presiding Judge

2015-002331

THE STATE,

Respondent,

vs.

BRIAN TALKINGTON,

Appellant.

MEMORANDUM ON APPEALABILITY

Respondent, State of South Carolina, would respectfully show that this appeal must be dismissed as premature:

1. Appellant has been indicted but not yet tried for one count of Criminal Domestic Violence, 2nd Offense from an incident that took place on July 4, 2011.

2. On January 27, 2012, the Richland County Solicitor's Office moved to remand the case from General Sessions' Court to Magistrate Court as a Criminal Domestic Violence - 1st Offense after reconciling an error on the Appellant's rap sheet.

3. On April, 2012, the Appellant entered a request for a jury trial.

4. The first trial date was set for June 7, 2012, but was continued by the Appellant. The second trial date was set for October 17, 2012, but was again continued by the Appellant.

5. On February 13, 2013, the case proceeded to trial in magistrate court in front of Judge Edmond. After the jury was picked, but BEFORE it was sworn, the defense made a motion to dismiss, claiming that the charge was improperly remanded to the lower court. Judge Edmond agreed and concluded that he did not have jurisdiction to preside over the case .

6. On November 21, 2013, the State dismissed the Criminal Domestic Violence - 2nd Offense charge. A new warrant was drawn for Criminal Domestic Violence - 1st Offense and served on the Appellant.

7. On October 14, 2014, Judge Shealy heard pre-trial motions from the Appellant to dismiss the case based on double jeopardy. On October 16, 2014, the judge issued an order denying Appellant's claim, opining that "jeopardy does not attach in a proceeding where the court lacks jurisdiction." (see attached Order dated October 16, 2014)

8. On October 23, 2014, the Appellant filed a Motion for Reconsideration with Judge Shealy. The motion was heard on November 14, 2014.

9. On November 17, 2014, Judge Shealy issued a second order that was consistent with his 10/16/2014 Order and specifically stating that "Even if it was undisputed that the jury had been sworn, State v. Whetstone makes it clear that Defendant's double jeopardy argument is without merit, as jeopardy does not attach in a proceeding where the court lacks jurisdiction. Therefore, I find no prejudice to the Defendant from the loss of the tape." (see attached Order dated November 17, 2014).

10. On September 9, 2015, the Honorable Tanya A. Gee, Circuit Court Judge heard oral arguments form the parties. On October 12, 2015, Judge Gee issued an order denying ALL of appellant's claims and affirming Judge Shealy's orders from October 14, 2014 and November 17, 2014.

11. Specifically, Judge Gee ruled that Double Jeopardy did not attach; that the lack of a transcript was immaterial to the case at point, and that the State was not estopped from

prosecuting the appellant for Criminal Domestic Violence of a High and Aggravated Nature.

12. On October 12, 2015, the appellant filed a Motion for Reconsideration with the Circuit Court.

13. On October 26, 2015, Judge Gee issued an Order Denying Appellant's Motion for Reconsideration.

14. The State submits that Appellant's appeal must be dismissed as premature. "In South Carolina, a criminal defendant may not appeal until sentence has been imposed." State v. Miller, 289 S.C. 426, 336 S.E.2d 705 (1986). "Consistent with this rule, an order denying a double jeopardy claim is not immediately appealable." *Id.* Our supreme court has specifically stated, "it is a bad practice, and generally condemned, to hear appeals by piecemeal, especially in criminal cases [...]. 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 otherwise not entitled to it [...] and thereby stop the trial...". State v. Huges, 56 SC 540, 35 S.E. 214, 215 (1900).

6. Accordingly, Appellant's appeal must be dismissed at this time as premature.

WHEREFORE, the State submits the appeal must be dismissed because Appellant appeal is not immediately appealable.

Respectfully submitted,

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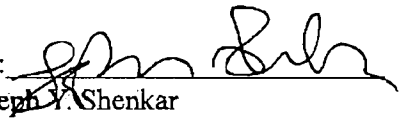
BY: 
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ATTORNEYS FOR RESPONDENT

November 30, 2015

The South Carolina Court of Appeals

The State, Respondent,

v.

Brian Talkington, Appellant.

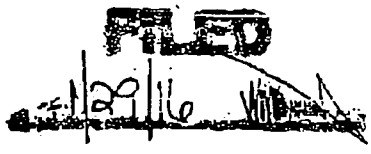
Appellate Case No. 2015-002331

ORDER

After careful consideration, this appeal is dismissed because the underlying order is not immediately appealable. *See State v. Miller*, 289 S.C. 426, 426-27, 346 S.E.2d 705, 705-06 (1986) ("In South Carolina, a criminal defendant may not appeal until sentence has been imposed. Consistent with this rule, an order denying a double jeopardy claim is not immediately appealable." (citations omitted)).[1] The remittitur will be sent as required by Rule 221(b), SCACR.

FOR THE COURT

Columbia, South Carolina



cc:
Neal Douglas Truslow, Esquire
Hans William Pauling, Esquire
Joseph Yechiel Shenkar, Esquire
Alan McCrory Wilson, Esquire

[1] To the extent Appellant has requested this court to treat the notice of appeal as a "petition to the appropriate Court for a writ of prohibition and/or mandamus," that request is denied.

The South Carolina Court of Appeals

The State, Respondent,

v.

Brian Talkington, Appellant.

Appellate Case No. 2015-002331

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied. Additionally, Appellant's alternative request for a "Writ of Prohibition and/or Mandamus" is also denied.

Thomas E. Huff A.C.J.

Paul G. Short J.

Kaye G. Hearn J.

Columbia, South Carolina

FILED
4/13/16

cc:
Neal Douglas Truslow, Esquire
Hans William Pauling, Esquire
Joseph Yechiel Shenkar, Esquire
Alan McCrory Wilson, Esquire