

KEVIN S. BRACKETT  
SOLICITOR

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APR 10 2017

SC Court of Appeals

April 5, 2017

The South Carolina Court of Appeals  
Attention: V. Claire Allen, Deputy Clerk  
1220 Senate Street  
Columbia, South Carolina 29201

RE: The State v. Kevin C. Privette  
Appellate Case No. 2017-000204

To Whom It May Concern:

In response to your letter received, please accept this as a memorandum addressing the issue of appealability in the above-mentioned case, specifically that the above-mentioned case cannot be appealed at this time.

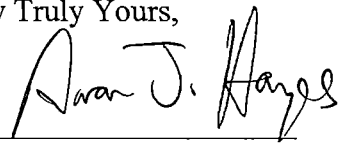
The right to appeal is controlled by statute. Jefferson by Johnson v. Gene's Used Cars, Inc., 295 S.C. 317, 317, 368 S.E.2d 456, 456 (1988). In the absence of a statute or rule that permits the immediate appeal of an interlocutory order, only final orders are generally appealable. Culbertson v. Clemens, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996); Woodward v. Westvaco Corp., 319 S.C. 240, 242, 319 S.E.2d 392, 393 (1995), overruled on other grounds by Sabb v. S.C. State University, 350 S.C. 416, 567 S.E.2d 231 (2002). An order is interlocutory and not final when "there is some further act which must be done by the court prior to a determination of the rights of the parties . . . ." Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). The purpose of this general practice is to prevent piecemeal appeals. Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 94, 529 S.E.2d 11, 13 (2000). Interlocutory decisions or rulings are generally not immediately appealable because appellate review is available after the final judgment. Id.

However, South Carolina, like most jurisdictions, confers the right to the immediate appeal of some interlocutory orders in S.C. Code Ann. 14-3-330 (1976 & Supp. 2014), which

outlines appellate jurisdiction and delineates the categories of interlocutory decisions subject to immediate appeal. See also Rule 201, SCACR (“Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.”); State v. Miller, 289 S.C. 426, 427, 346 S.E.2d 705, 706 (1986) (“In both state and federal court, the right to appeal is conferred by statute or rule, S.C. Code Ann. § 14-3-330 (1976) . . . .”); Woodward, 319 S.C. at 242, 319 S.E.2d at 393 (“Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C. Code Ann. § 14-3-330.”).

Specifically, S.C. Code Ann. § 14-3-330 (2) confers jurisdiction upon our appellate courts for the correction of errors of law when the order or ruling affects “a substantial right when such order . . . in effect determines the action and prevents a judgement from which an appeal might be taken . . . .” An order affecting a “substantial right” is defined as one which discontinues an action, **prevents an appeal**, grants or refuses a new trial, or strikes an action or defense. Mid-State Distrib., Inc., 310 S.C. at 335, 426 S.E.2d at 780. (emphasis added); see also Breland, 339 S.C. at 93, 529 S.E.2d at 13 (2000) (stating that immediate appeals are permitted where a substantial right could not be vindicated on appeal). An immediate appeal of an interlocutory order is permitted when no appellate review is available to correct the trial court’s error after the final judgment. Id. (citing Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985)). In South Carolina, an immediate appeal may be taken where the rights of the State would be substantially impaired if the appeal is not heard. When error in the decision or ruling cannot be vindicated on appeal, a substantial right is involved. Breland, 339 S.C. at 93, 529 S.E.2d at 13.

Very Truly Yours,

*for*  #100114

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w/e/p

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JK

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