

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Intermediate Appellate Case No. 2015-CP-40-04086
Appellate Case No. 2017-002389

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DEC 13 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

DANIEL KIM,

APPELLANT.

MOTION TO DISMISS APPEAL AS AN IMPROPER INTERLOCUTORY APPEAL

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

I.

Appellant’s driving under the influence charge was dismissed in magistrate’s court. The State subsequently appealed the Magistrate Judge’s ruling. On January 15, 2016, the Circuit Court issued an Order Remanding the Case to the Magistrate for a New Trial Due to Improper Dismissal. Appellant subsequently filed a Motion to Alter and/or Amend the Judgment pursuant to Rule 59(e), SCRPC on January 26, 2016. The Circuit Court subsequently issued an Order Denying Plaintiff’s Motion to Reconsider. Attachment A (Order Denying Plaintiff’s Motion to Reconsider). Appellant subsequently submitted a notice of intent to appeal Judge Cooper’s

reversal of the dismissal of his driving under the influence charge on November 3, 2017.
Attachment B (Appellant's Notice of Intent to Appeal).

II.

Pursuant to S.C. Code Ann. § 14-3-330(2)(a), the Supreme Court has appellate jurisdiction to review an intermediate order that "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." See also Rule 201, SCACR ("Appeal may be taken, as provided by law, from any final judgment, appealable order[,] or decision. . . . Only a party aggrieved by an order, judgment, sentence[,] or decision may appeal."). Typically, a criminal defendant may not appeal "except from the final sentence imposed by the court." State v. Looper, Op. No. 27746 (S.C. Sup. Ct. filed November 8, 2017) (Shearouse Adv. Sh. No. 42 at 11-16) (citing State v. Gregorie, 339 S.C. 2, 3, 528 S.E.2d 77, 78 (2000); see also State v. Miller, 289 S.C. 426, 426, 346 S.E.2d 705, 705 (1986) ("In South Carolina, a criminal defendant may not appeal until sentence has been imposed.")).

In Looper, the South Carolina Supreme Court addressed a situation exceptionally similar to Appellant's case. The defendant in Looper, who was charged with driving under the influence, made a pre-trial motion to suppress evidence of field sobriety tests and breath analysis. Shearouse Adv. Sh. No. 42 at 12. The magistrate subsequently granted the defendant's motion to suppress and dismissed the case. Id. The State appealed to the Circuit Court, which reversed and remanded, holding the Magistrate erred in granting the defendant's motion and dismissing the case. Id. The defendant then attempted to appeal the case to the Court of Appeals, which analogized the circuit court's order to an interlocutory order denying a motion to suppress evidence and dismissed the appeal, finding the defendant was not "aggrieved" in a legal sense because he had not been convicted and sentenced. State v. Looper, 412 S.C. 363, 365-66, 772

S.E.2d 516, 517. The Supreme Court affirmed as modified the decision of the Court of Appeals, finding, “As Petitioner has not been convicted and sentenced, there has been no final judgment, and as no exception to the requirement of a final judgment is applicable under the facts of this case, Petitioner's appeal is premature and must be dismissed.” Shearouse Adv. Sh. No. 42 at 15

As was the case in Looper, Appellant has not been convicted and sentenced, therefore his appeal is premature and should be dismissed. Appellant was not “aggrieved” by the Circuit Court’s order reversing the magistrate’s dismissal of his driving under the influence charge, thus the order is not immediately appealable. Appellant’s appeal, therefore, is an improper interlocutory appeal and should be dismissed.

WHEREFORE, the State respectfully requests that this Court dismiss Appellant’s appeal, as it is an appeal of an interlocutory order that is not immediately appealable.

Respectfully submitted,

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

BY: 

V. Henry Gunter
S.C. Bar #102259

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 13, 2017

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PROOF OF SERVICE

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I, Destiny Blue, certify that I have served the within "Motion to Dismiss Appeal As An Improper Interlocutory Appeal" by depositing two copies of the same in the United States mail, postage prepaid, addressed to Michael Laubshire, 455 St. Andrews Road, Suite E-1, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served. This 13th day of December, 2017.



DESTINY BLUE
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

December 13, 2017

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SC Court of Appeals

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

RE: State v. Daniel Kim— Appellate Case No. 2017-002389

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the “Motion to Dismiss Appeal as An Improper Interlocutory Appeal,” along with proof of service, for filing in the above-referenced appeal.

Sincerely,

V. Henry Gunter, Jr.
Assistant Attorney General
S.C. Bar No. 102259

HG/db
Enclosures

cc: Michael Laubshire, Esquire
Victim Advocacy Division