

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Anderson County  
Honorable R. Lawton McIntosh, Circuit Court Judge  
Appellate Case Tracking No. 2018-001236  
\_\_\_\_\_

**RECEIVED**

JUL 16 2018

SC Court of Appeals

The State,

Respondent,

vs.

Larry Edward Adger, III,

Appellant.  
\_\_\_\_\_

**MEMORANDUM REGARDING APPEALABILITY**  
\_\_\_\_\_

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

Appellant's Notice of Appeal indicates he is appealing the circuit court's order dated June 20, 2018. A review of the Order by the Honorable R. Lawton McIntosh indicates Appellant was convicted by a jury on three counts. However, the circuit court deferred sentencing on all three counts pending resolution of Appellant's complaint filed in federal court. Only upon completion of the federal court proceedings, or upon a violation of the conditions of bond or electronic monitoring will Appellant be subjected to immediate sentencing. (Order dated June 20, 2018).

II.

Pursuant to Rule 201(a), SCACR: "Appeal may be taken, as provided by law, from any final judgment, appealable order, or decision." Rule 201(b) continues: "Only a party aggrieved

by an order, judgment, **sentence**, or decision may appeal.” Rule 201(b), SCACR (emphasis added). Pursuant to Rule 203(b)(2), SCACR: “After a plea or trial resulting in conviction . . . a notice of appeal shall be served on all respondents within ten (10) days **after the sentence is imposed.**” (Emphasis added). Further, section 14-3-330 of the South Carolina Code provides, in pertinent part, that an immediate appeal may be taken in a law case from:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

S.C. Code Ann. § 14–3–330(1) and (2) (1976).

South Carolina has long held to the requirement that an appeal from a criminal conviction is not proper until a sentence is imposed. See State v. McKettrick, 13 S.C. 439 (1880) (Court refused to hear an appeal after conviction when judge refused to issue sentence); see also, State v. Hightower, 33 S.C. 598, 11 S.E. 579, 580 (1890) (dismissing appeal without prejudice when appeal taken after conviction but prior to sealed sentence being imposed). Judgment in a criminal case is not final until sentence is imposed. Ex parte Murray, 261 S.C. 255, 199 S.E.2d 718 (1973) (finding appeal premature when juvenile adjudicated delinquent but disposition withheld until further order). The South Carolina Supreme Court has reiterated this requirement for an appeal from a criminal conviction in recent cases. See e.g., State v. Rearick, 417 S.C. 391, 406, 790 S.E.2d 192, 200 (2016)(dismissing an appeal from denial of double jeopardy motion without prejudice, finding appeal is not allowed until after sentence is imposed); State v. Isaac, 405 S.C.

177, 747 S.E.2d 677 (2013) (finding denial of immunity is not immediately appealable and can only be appealed after sentence is imposed).

III.

Accordingly, South Carolina has long held that an appeal is premature and should be dismissed without prejudice if a person is convicted but not yet sentenced by the court. Because Appellant's sentencing was deferred, he does not have a final judgment from which to appeal. As a result, this Court should dismiss his current appeal without prejudice to the Appellant to bring the appeal upon sentencing by the trial court.

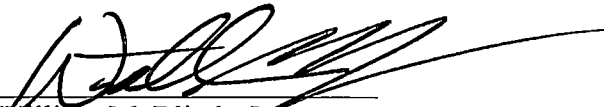
WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, and dismiss the appeal without prejudice to the right of Appellant to bring the appeal after sentencing; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

J. BENJAMIN APLIN  
Senior Assistant Deputy Attorney General

WILLIAM M. BLITCH, JR.  
Senior Assistant Attorney General

BY:   
William M. Blitch, Jr.  
Office of the Attorney General  
Post Office Box 11549  
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(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 16, 2018

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**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the Memorandum Regarding Appealability on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Charles W. Whiten, Jr., Esquire  
Post Office Box 716  
Anderson, South Carolina 29622

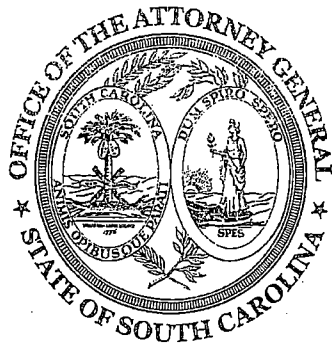
Robert M. Dudek, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, South Carolina 29211

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

This 16<sup>th</sup> day of July, 2018.



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(803) 734-3727



ALAN WILSON  
ATTORNEY GENERAL

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SC Court of Appeals

July 16, 2018

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

Re: State v. Larry Edward Adger, III  
Appellate Case No. 2018-001236

Dear Ms. Kitchings:

Enclosed please find the original and a copy of a Memorandum Regarding Appealability along with proof of service for filing in the above-referenced appeal.

Sincerely,

William M. Blich, Jr.  
Senior Assistant Attorney General

Enclosures

cc: Charles W. Whiten, Jr., Esquire  
Robert M. Dudek, Esquire  
Victim Advocacy Division