

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Court of General Sessions  
Letitia H. Verdin, Circuit Court Judge

---

**RECEIVED**  
DEC 08 2018  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

Respondent

v.

MIGUEL A. CANO

Petitioner

Appellate Case No. 2018-002077

---

**MOTION TO DISMISS NOTICE OF APPEAL AS INTERLOCUTORY**

---

Respondent submits the notice of appeal filed in this case must be dismissed as interlocutory. Petitioner appealed a circuit court order denying his motion to review and remand a contested waiver of jurisdiction from Family Court. Our Supreme Court has repeatedly held such an appeal is interlocutory.

In support, respondent would respectfully show this Court:

**I. Background**

Petitioner was charged with murder under a juvenile warrant for the stabbing death of his mother.<sup>1</sup> (2015-JU-23-824). Following a hearing in Family Court, Judge Alex Kinlaw, Jr.,

---

<sup>1</sup> Respondent notes it does not agree with petitioner's stated version of facts in the writ of supersedeas accompanying the notice of appeal, but has not included a counter statement of facts as no record of the circuit court proceedings has yet been introduced on appeal. *See generally* Rule 210, SCACR (providing what matter shall be included in the record on appeal); *S.C. State*

transferred jurisdiction of petitioner to the Court of General Sessions by order dated January 28, 2017. Petitioner made several post-hearing motions which Judge Kinlaw denied March 6, 2017. On March 14, 2017, in General Sessions, petitioner filed a motion for review and remand to Family Court. Judge Letitia H. Verdin denied the motion by order dated May 23, 2017, and on June 21, 2017, denied a later motion for reconsideration. During this time, a Greenville County grand jury indicted petitioner for murder. (2017-GS-23-03939A). On August 7, 2018, petitioner filed a separate motion to transfer to Family Court. Judge Verdin allowed petitioner to proffer testimony in support of his motions during a hearing on August 24, 2018. By order dated November 5, 2018, Judge Verdin found no legal basis to support the request to review the decision of the Family Court and again denied the motions to review and remand, and transfer to Family Court.

In initiating this action, petitioner seeks an improper appeal of an interlocutory order. Accordingly, the appeal must be denied.

## II. Appeal is Interlocutory

In South Carolina, a criminal defendant does not have a constitutional right to appeal. *State v. Rearick*, 417 S.C. 391, 398, 790 S.E.2d 192, 196 (2016). Instead, the right to appeal a criminal conviction is conferred by statute. *See* S.C. Code § 14-3-330 (providing an immediate appeal may be taken from: (1) an order that involves the merits; (2) an order affecting a substantial right which determines the action and prevents a judgment from which an appeal may be taken, grants or refuses a new trial, or strikes an answer or any pleading in an action; (3) a

---

*Highway Dep't v. Meredith*, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) ("[C]ounsel is prohibited from embodying in their briefs any fact which does not appear in the record."); *Morris v. Tidewater Land & Timber, Inc.*, 388 S.C. 317, 333, n. 16, 696 S.E.2d 599, 608 (Ct. App. 2010) ("Under our appellate court rules, we may not consider any fact that does not appear in the record."). The facts of the crime and character or characteristics of the defendant are not relevant to the legal analysis of the motion.

final order affecting a substantial right made in a special proceeding or upon a summary application; and, (4) an interlocutory order or decree in common pleas dealing with an injunction or appointment of a receiver). To seek an appeal, a criminal defendant must come within the terms of the statute. *State v. Miller*, 289 S.C. 426, 427, 346 S.E.2d 705, 706 (1986). An order transferring jurisdiction of a juvenile defendant from Family Court to General Sessions does not fall within any category of orders which is immediately appealable under § 14-3-330 by the express words of the Supreme Court.

"[A] family court order transferring jurisdiction over a defendant to a court of general sessions is interlocutory and not subject to immediate appeal." *State v. Lockhart*, 275 S.C. 160, 161, 267 S.E.2d 720, 720 (1980). In addition to the instant scenario, the Supreme Court has held, generally, a criminal defendant may not appeal until sentence is imposed in other instances. *See Rearick*, 417 S.C. at 406, 790 S.E.2d at 200 (holding denial of a claim of double jeopardy is not immediately appealable); *State v. Isaac*, 405 S.C. 177, 185, 747 S.E.2d 677, 681 (2013) (holding the denial of a request for immunity under the Protection of Persons and Property Act is not immediately appealable); *In re Lorenzo B.*, 307 S.C. 439, 439, 415 S.E.2d 795 (1992) (holding an order adjudicating a juvenile delinquent is not appealable until imposition of final judgment at the dispositional hearing); *Parsons v. State*, 289 S.C. 542, 542, 347 S.E.2d 504, 504 (1986) (holding a denial of bail pending trial is not immediately appealable); *State v. Washington*, 285 S.C. 457, 458, 330 S.E.2d 289, 289 (1985) (holding a conviction at a trial in absentia prior to imposition of sentence is not immediately appealable); *State v. Dingle*, 279 S.C. 278, 282, 306 S.E.2d 223, 225 (1983), *abrogated on other grounds*, *Horton v. California*, 496 U.S. 128, (1990) (holding an order committing the defendant to the Department of Mental Health is not immediately appealable); *State v. Hubbard*, 277 S.C. 568, 569, 290 S.E.2d 817, 817

(1982) (holding the denial of a motion to suppress evidence is not immediately appealable); *State v. Parker*, 267 S.C. 317, 323, 227 S.E.2d 677, 679 (1976) (holding the denial of a motion to quash an indictment is not immediately appealable). Historically, it has been held "it is bad practice, and generally condemned, to hear appeals by piecemeal," especially in criminal cases:

[I]t is destructive of the prompt administration of justice, which is so essential to the peace of society. 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, 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.

*State v. Hughes*, 56 S.C. 540, 35 S.E. 214, 215 (1900). As recently explained by the *Rearick* Court, while the appellate rules "may seem harsh, a defendant is neither denied a future appeal nor other remedies" when the courts dismiss appeals as interlocutory. 417 S.C. at 405, 790 S.E.2d at 199.

In petitioner's case, Judge Kinlaw properly transferred jurisdiction of petitioner from the Family Court to the Court of General Sessions. The jurisdiction of the family court over juveniles is a privilege rather than a matter of right. *Sanders v. State*, 281 S.C. 53, 56, 314 S.E.2d 319, 321 (1984). The best interests of the public or of the juvenile may require the juvenile be held accountable as an adult for his crimes. *Id.* (citing *In the Interest of Shaw*, 274 S.C. 534, 265 S.E.2d 522 (1980)) (noting appellant was charged with two counts of murder and, had the case remained in family court, the maximum sentence possible was an indeterminate period of confinement not to exceed appellant's twenty-first birthday, while the circuit court could impose an adult sentence). There is no final judgment or sentence to appeal in petitioner's case. He must wait for the criminal justice process to conclude before he appeals. Petitioner's appeal of the waiver hearing is interlocutory by the express holding of the Supreme Court.

Therefore, the notice of appeal must be dismissed.

### III. Conclusion

WHEREFORE, respondent requests this Court dismiss the notice of appeal filed in this case as interlocutory based on clear precedent.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

SHERRIE BUTTERBAUGH  
Assistant Attorney General

BY: 

SHERRIE BUTTERBAUGH  
SC Bar No. 101477

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
(803).734-6305

ATTORNEYS FOR RESPONDENT

December 6, 2018.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Court of General Sessions  
Letitia H. Verdin, Circuit Court Judge

---

THE STATE OF SOUTH CAROLINA

Respondent

v.

MIGUEL A. CANO

Petitioner **RECEIVED**  
DEC 06 2018  
SC Court of Appeals

Appellate Case No. 2018-002077

---

PROOF OF SERVICE

---

I, Sherrie Butterbaugh, counsel for the Respondent, certify that I have served the within Motion to Dismiss Notice of Appeal as Interlocutory on Petitioner by depositing two (2) copies of the same via U.S. mail, first class, postage prepaid to his attorneys of record, Christopher D. Scalzo, Esq. and Michael G. Martinez, Esq., Greenville County Courthouse, 305 E. North Street, Suite 123, Greenville, South Carolina 29601, and to Robert Dudek, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

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

This 6<sup>th</sup> day of December, 2018.



---

SHERRIE BUTTERBAUGH  
Office of Attorney General  
P. O. Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

ATTORNEY FOR RESPONDENT