

The South Carolina Court of Appeals

The State, Respondent,

v.

Miguel Angel Cano, Appellant.


Appellate Case No. 2018-002077

ORDER

Appellant appealed an order by the circuit court in which it (1) found it had no authority to review the family court's waiver of jurisdiction over his murder charge and (2) declined to remand the matter to the family court. Appellant simultaneously filed a petition for a writ of supersedeas asking this court to stay his trial in the circuit court during the pendency of this appeal. Respondent filed a return to the petition and a motion to dismiss this appeal, arguing the circuit court's order is not immediately appealable. Although Appellant advances a compelling argument—that the family court's waiver of jurisdiction affects a mode of trial to which he is entitled—this court is bound by the supreme court's determination that the transfer of jurisdiction over a criminal matter from the family court to the circuit court is not immediately appealable.¹ See *State v. Lockhart*, 275 S.C. 160, 161, 267 S.E.2d 720, 720 (1980) (holding "a family court order transferring jurisdiction over a defendant to a court of general sessions is interlocutory and not subject to immediate appeal"); *id.* (granting the State's motion to dismiss an appeal from a family court order waiving jurisdiction over a criminal matter); *Sanders v. State*, 281 S.C. 53, 314 S.E.2d 319 (1984) (citing to *Lockhart* after the waiver statute was amended to be substantively identical to the current statute in relevant

¹ This court also notes as a matter of fairness that the relevant statute, section 63-19-1210 of the South Carolina Code (Supp. 2018), allows for immediate circuit court review of the family court's refusal to waive jurisdiction but is silent as to such review when waiver is granted. See § 63-19-1210(6).

part).² Accordingly, after careful consideration of the parties' filings, Respondent's motion to dismiss is granted and Appellant's petition for a writ of supersedeas is denied. Review of the circuit court's and family court's rulings may be sought, if necessary, after trial in the circuit court. *See State v. Pittman*, 373 S.C. 527, 558-61, 647 S.E.2d 144, 160-61 (2007) (reviewing the family court's waiver of jurisdiction in an appeal taken after trial and sentencing was held in the circuit court); *State v. Avery*, 333 S.C. 284, 509 S.E.2d 476 (1998) (same). The remittitur will be sent as provided by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc: Christopher D. Scalzo, Esquire
Michael G. Martinez, Esquire
William Walter Wilkins, III, Esquire
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FILED

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² Appellant argues he appealed only the circuit court's refusal to review the family court's waiver of jurisdiction—a procedural question—and not the merits of the family court's waiver. However, if the circuit court's order affected a mode of trial to which Appellant was entitled, as he argues, the family court's waiver of jurisdiction would also be immediately appealable because it also affected Appellant's purported substantial right to be tried in the family court.