

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Beaufort County
Hon. Roger M. Young, Circuit Court Judge
Appellate Case Tracking No. 2020-000237

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S.C. SUPREME COURT

The State,

Respondent,

v.

Shemuel N.B. Yisrael,

Petitioner.

**RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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STATEMENT OF QUESTIONS PRESENTED

I. The Court of Appeals properly dismissed Petitioner's improper interlocutory appeal from an alleged change of venue to hold a status conference in Jasper County instead of Beaufort County.

STATEMENT OF THE CASE

Petitioner was indicted for failure to stop for a blue light, malicious injury to property, and resisting arrest. (App.4)¹. On March 6, 2019, Chief Justice Beatty issued an Order granting the Honorable Roger M. Young, Sr. exclusive jurisdiction over Petitioner's cases. (App.46). Pursuant to this Order, on April 30, 2019, a status conference was scheduled before Judge Young in Jasper County on June 3, 2019, where he was holding court. (App.3.5). Petitioner objected to this "Change of Venue to Jasper County" arguing the crimes occurred in Beaufort so that is where the trial should be held. (App.3.1). Trial did not go forward in Jasper County, nor has venue been transferred to Jasper County. Instead, jurisdiction remains with Judge Young based on the Order of this Court.

Petitioner filed a Notice of Appeal in the Supreme Court which was transferred to the Court of Appeals. (App.1-2). The State served and filed a Motion to Dismiss on October 9, 2019, based on the interlocutory nature of the appeal. (App.12.1). By Order of the same date, the Court of Appeals dismissed the appeal. (App.13). The Court also indicated because the appeal was dismissed it need not rule on the State's Motion. (App.14). Petitioner filed a Petition for Rehearing, which was subsequently denied by the Court of Appeals. (App.15.1; 16). Petitioner subsequently filed a Petition for Writ of Certiorari. This Return follows.

¹ The State will use the number at the bottom right of Petitioner's Pro Se Record on Appeal filed with the Court for all page references.

ARGUMENT

I. The Court of Appeals properly dismissed Petitioner's improper interlocutory appeal from an alleged change of venue to hold a status conference in Jasper County instead of Beaufort County.

The Court of Appeals correctly found this appeal should be dismissed as an improper interlocutory appeal. Petitioner's Notice of Appeal indicated it is an appeal of the denial of his objection to a change of venue. Specifically, it states: "Shemuel Yisrael, appeals the verbal order denying his motion, namely 'Defendant's Objection to Change of Venue to Jasper County'" This Court should deny the Petition for Writ of Certiorari and allow the case to proceed before the Honorable Roger Young.

Orders regarding change of venue are interlocutory and not immediately appealable. See Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 94, 529 S.E.2d 11, 14 (2000) ("Requiring a defendant to wait until after trial to appeal the issue of proper venue is the most appropriate course to take where any error in that decision will not prejudice the defendant anymore than other interlocutory orders which, if in error, would require a new trial."); Godley v. Uniroyal Inc., 278 S.C. 571, 572, 300 S.E.2d 78, 78 (1983) ("It is generally held that an order granting or refusing a change of venue is interlocutory and therefore not immediately appealable."); S.C. Code Ann. § 14-3-330 (Supp. 2018) (Allowing an interlocutory appeal only of "[a]n 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").

"A criminal defendant may not appeal until final judgment." State v. Robinson, 287 S.C. 173, 337 S.E.2d 204 (1985). Judgment in a criminal case is not final until sentence is imposed.

Id. See also State v. Williams, 321 S.C. 381, 468 S.E.2d 656 (1996) (in appeal of State challenging dismissal of criminal charges, criminal defendants' cross-appeals dismissed by Supreme Court because defendants had not been sentenced); Parsons v. State, 289 S.C. 542, 347 S.E.2d 504 (1986) (a criminal defendant may not appeal until sentenced). Because an appeal is not proper at this time, the Court of Appeals properly dismissed the appeal and this Court should deny the Petition for Writ of Certiorari.

Additionally, the trial court could properly hold a status conference in Jasper County.

Chief Justice Beatty's Order specifically stated:

Judge Young shall decide all matters pertaining to these cases, including motions to appoint or relieve counsel, and shall retain jurisdiction over these cases regardless of where he may be assigned to hold court and may schedule hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

(App.46). When Judge Young was holding Court in Jasper County, Petitioner's status conference was properly held in Jasper County pursuant to the Order. The trial has not taken place, but when it is scheduled it will be before Judge Young pursuant to this Court's Order. As a result, to the extent the trial court denied Petitioner's objection, it was properly denied because jurisdiction and venue follow the Honorable Roger Young. Accordingly, this Court should deny the Petition for Writ of Certiorari in this appeal.

CONCLUSION

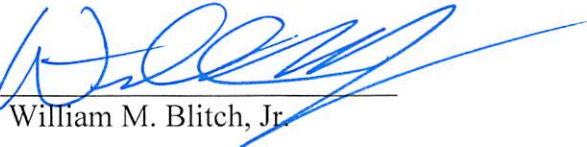
For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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