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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
In The Court of General Sessions

Honorable D. Craig Brown,
Circuit Court Judge

Case No.: 2021-001442

The State, Respondent,

v.

Ahmand Deshod McKnight, Defendant.

In re: Frederick DeBerry, Appellant.

Memorandum Addressing Appealability of Order

On December 22, 2021, this Court requested that Appellant file a memorandum addressing the appealability of this case. To answer this Court, Appellant would show the following:

Relevant Facts

Appellant owns a bail bonding company; however, in addition to bail bonds, Appellant's Company also works with Securus Technologies to install and manage the electronic monitoring bracelet accounts for Securus Technologies.

On April 27, 2020, the Honorable Thomas Russo set bond for Defendant McKnight. In the Order setting bond Defendant McKnight was required to be monitored through GPS monitoring. The

written order filed with the clerk stated, “Any violation of misconduct be Defendant will be reported to Law Enforcement by GPS Monitoring.”

Defendant McKnight posted bond through Reggie Tindall and Tindal Bail Bonds, LLC. However, Tindall did not provide any electronic monitoring. Therefore, Tindall filed asked Deberry Bail Bonding to assist with the electronic monitoring.

Nakita Flores, an agent of Deberry Bail Bonding, put the ankle monitor on Defendant McKnight and notified Securus Technologies to begin electronic monitoring.

The State alleges that the Defendant McKnight failed to comply with the conditions and restrictions of the electronic monitoring. The State also alleges that Appellant was in violation of Judge Russo’s order. Therefore, the State filed a Petition for a Rule to Show Cause against Reggie Tindall, Nakita Flores and Frederick DeBerry.

On December 8, 2021, a hearing was convened before the Honorable D. Craig Brown. Prior to the hearing beginning, the Court recognized that this was a criminal contempt hearing and that he could incarcerate the parties for up to six months.

Appellant requested a trial by jury as provided for in criminal cases under both the United States Constitution¹ and the South Carolina Constitution². Appellant further argued that the South Carolina Constitution required that he be indicted prior to a trial in General Sessions for criminal

¹ See U.S. Const. Amend VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.”). However, at the hearing, Counsel was candid about the Sixth Amendment jurisprudence concerning contempt hearings.

² See The Constitution of South Carolina, Article I, Section 14 (“The right of trial by jury shall be preserved inviolate.”).

contempt.³ The Circuit Court denied Appellant's requests and indicated that it intended to proceed forward with a bench trial for contempt.

Appellant then informed the Circuit Court that based on the Supreme Court's decision in *Foggie v. CSX Transp.*, it was Appellant's belief that he would waive his issues if he did not immediately appeal the Circuit Court's oral order. The Circuit Court agreed to adjourn the hearing so that Appellant could file the present case.

This Appeal follows.

Argument

The Appellate Courts of this state have jurisdiction to hear appeals based on S.C. Code § 14-3-330. S.C. Code § 14-3-330 states the following:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (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;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

³ See The Constitution of South Carolina, Article I, Section 11 (“No person may be held to answer for any crime the jurisdiction over which is not within the magistrate’s court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger.”).

This Court has found “Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights under [§ 14-3-330(2)] and are immediately appealable. *Bateman v. Rouse*, 358 S.C. 667, 674, 596 S.E.2d 386, 389-90 (Ct. App. 2004). Moreover, “The failure to timely appeal the interlocutory order of the trial court effects a waiver of appeal rights.” *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993).

Appellant submits that the following issues are immediately appealable:

- 1) The Circuit Court’s Denial of Appellant’s right to trial by jury under the South Carolina Constitution.
- 2) The Circuit Court’s Denial of Appellant’s right to grand jury indictment under the South Carolina Constitution.
- 3) The Circuit Court’s Denial of Appellant’s right to trial by jury under the United States Constitution.

Appellant respectfully submits that the Circuit Court’s ruling concerning these issues are proper for an interlocutory appeal under S.C. Code § 14-3-330.

January 3, 2022

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Certificate of Service

I certify that on this date, I served the Memorandum Addressing Appealability
on Respondent by emailing a copy to Respondent's counsel.

January 3, 2022

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In Re Frederick DeBerry Memo 2021-001442

1 message

Tristan Shaffer <tristan@shafferlawsc.com>
To: William Blitch <wblitch@scag.gov>

Mon, Jan 3, 2022 at 7:57 PM

Please see the attached.

 **Memorandum on timeliness.pdf**
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