

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case Tracking No. 2021-001442

RECEIVED

Jan 04 2022

SC Court of Appeals

The State,

Respondent,

vs.

Ahmand Deshod McKnight,

Defendant,

In re: Frederick DeBerry,

Appellant.

MEMORANDUM REGARDING APPEALABILITY

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

I.

Appellant's Notice of Appeal indicates he is appealing the circuit court's order denying him the right to a jury trial on a criminal contempt action in which the trial court has indicated he did not intend to sentence Appellant to more than six months incarceration and from the denial of a motion to require presentment of the underlying grounds for contempt to the grand jury. The underlying order is not immediately appealable and may be appealed in the event Appellant is found in criminal contempt.

II.

Initially, 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).¹ Nothing in the circuit court’s decision affects the merits of the action and so the first subsection is inapplicable.

Our Supreme Court has stated: “An order denying a party a jury trial is not immediately appealable **unless it deprives him of a mode of trial to which he is entitled as a matter of right.**” C & S Real Est. Servs., Inc. v. Massengale, 290 S.C. 299, 300, 350 S.E.2d 191, 192 (1986) (citing Williford v. Downs, 265 S.C. 319, 218 S.E.2d 242 (1975); Alston v. Limehouse, 61 S.C. 1, 39 S.E. 192 (1901)). The Supreme Court has explained:

Pursuant to § 14–3–330(2), this Court has held on numerous occasions that when a trial court’s order deprives a party of a mode of trial **to which it is entitled as a matter of right**, such order is immediately appealable. Lester v. Dawson, 327 S.C. 263, 491 S.E.2d 240 (1997); C & S Real Estate Services, Inc., v. Massengale 290 S.C. 299, 350 S.E.2d 191 (1986); Creed v. Stokes 285 S.C. 542, 331 S.E.2d 351 (1985); First Union National Bank of South Carolina v. Soden, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); Preferred Sav. Bank, Inc. v. Elkholy 303 S.C. 95, 399 S.E.2d 19 (Ct. App. 1990). These cases not only permit, but indeed require, immediate appeal in the event of denial of a mode of trial **to which one is entitled as a matter of right**. Failure to immediately appeal such an order forever bars appellate review. See, e.g., Creed v. Stokes, *supra*.

Flagstar Corp. v. Royal Surplus Lines, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000) (emphasis added).

In noting: “Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights under section 14–3–330(2) of the South Carolina Code (1976 &

Supp.2003), and are immediately appealable” this Court in Bateman v. Rouse, 358 S.C. 667, 674, 596 S.E.2d 386, 389–90 (Ct. App. 2004), omitted the significant language above that requires the party be entitled to the jury trial “as a matter of right.” The question was not at issue in Bateman because it was a civil case at law, to which a right to a jury trial has long existed. In this case, there is a significant question of whether Appellant is entitled to a jury trial “as a matter of right” and the answer to that question determines whether the issue is immediately appealable. See e.g., Alston v. Limehouse, 61 S.C. 1, 39 S.E. 192, 193 (1901) (“It is settled beyond controversy in this state that it is error, from which an appeal will lie, to deny to a party a mode of trial to which he is **entitled by law.**”)(emphasis added).

“Whether a party is entitled to a jury trial is a question of law.” Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). In State v. Passmore, 363 S.C. 568, 611 S.E.2d 273 (Ct. App. 2005), Judge Anderson conducted a detailed and exhaustive history into the right to a jury trial in a criminal contempt proceeding. As has been recognized by many courts, Appellant has no right to a jury trial for a criminal contempt proceeding unless he is to be punished by more than six months. Id. at 580, 611 S.E.2d at 280 (citing *inter alia*, Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968)). Our Supreme Court has enunciated:

In Bloom v. Illinois, 391 U.S. 194, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968), the Supreme Court held that prosecutions for serious criminal contempts are subject to the jury provisions of Art. III, Section 2 of the Constitution, and of the Sixth Amendment, which is made binding upon the states by virtue of the due process clause of the Fourteenth Amendment. In Codispoti v. Pennsylvania, 418 U.S. 506, 94 S.Ct. 2689, 41 L.Ed.2d 912 (1974) the Court held that defendants in state criminal trials **who are committed to imprisonment of more than 6 months are entitled to a jury trial.**

Curlee v. Howle, 277 S.C. 377, 383, 287 S.E.2d 915, 918 (1982) (emphasis added). As is clear, the test is whether the person has been committed to imprisonment for more than six months. In

¹ The remaining two subsections are clearly not applicable in this case.

this case, Appellant has not been committed to imprisonment because he has not been convicted. Additionally, it is the State's understanding the circuit court specifically indicated any resulting commitment would be for six months or less. As a result, Appellant is not entitled to a jury trial as a matter of right, and the circuit court's ruling is interlocutory and not immediately appealable.

III.


Accordingly, Appellant is not entitled to a jury trial as a matter of right. Because the circuit court did not deny a mode of trial to which he was entitled as a matter of right, he is not entitled to an immediate appeal. He may appeal a resulting criminal contempt conviction and the denial of a right to a jury trial only if he is subsequently committed to incarceration for more than six months. As a result, this Court should dismiss his current appeal without prejudice to the Appellant to bring the appeal after he is convicted of criminal contempt and sentenced by the circuit 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 conviction for criminal contempt and any sentence imposed by the circuit court; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

January 4, 2022

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PROOF OF SERVICE

I, William M. Blich, Jr., certify that I have served the Memorandum Regarding Appealability on Appellant by emailing a copy to his counsel of record, Tristan M. Shaffer, at his primary email address as provided by the Attorney Information System (AIS).

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

This 4th day of January, 2022.



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