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Feb 09 2022

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.

Petition for Rehearing

On February 9, 2022, this Court issued an order summarily dismissing this appeal. Appellant would respectfully request that this Court rehear this matter. To support this request Appellant would submit the following 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.

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 oral order concerning these issues are proper for an interlocutory appeal under S.C. Code § 14-3-330.

In its Memorandum Regarding Appealability, Respondent argues that Appellant was not entitled to a jury trial “as a matter of right”, and therefore, the circuit court’s ruling is not immediately appealable.¹ In essence Respondent’s avers that if Appellant has a the right to a jury trial,

¹ Respondent seems to base this argument entirely on law interpreting the United States Constitution concerning the right to a jury trial for criminal contempt. Respondent’s Memorandum fails to specifically address Appellant’s two other claims under the South Carolina Constitution. Appellant

then the denial of a jury trial is immediately appealable. However Respondent avers that if Appellant does not have the right to a jury trial, then the denial of a jury trial is not immediately appealable.

Although Respondent's argument does not explicitly appear in this Court's order dismissing the appeal, this reasoning could foreclose Appellant opportunity to have appellate review of these issues at a later time. By Respondent's reasoning, this matter is not appealable because Appellant's issues for appeal without merit. If Appellant was subsequently convicted, Respondent would likely argue that Appellant is barred from reraising these issues under either the doctrine of collateral estoppel or the doctrine of the law of the case. Therefore, Appellant respectfully submits that the failure to exhaust appellate review at this time could foreclose his ability to seek appellate review in the future.

Moreover, there are likely policy reasons behind the Supreme Court's holding that the failure to immediately appeal the denial of a mode of trial constitutes a waiver of the right to appeal. *See Foggie.*, 315 S.C. at 23, 431 S.E.2d at 590. The courts of this state generally disfavor giving parties more than one bite at the apple. To institute a rule that the denial of a jury trial is not immediately appealable would potentially give defendants two bites of the apple. Defendants would get a chance to see if a judge would acquit them, then allow them to seek a second trial before a jury if they are dissatisfied with the outcome of the bench trial.

Based on the foregoing and the arguments raised in Appellant's Memorandum Addressing Appealability of Order, Appellant respectfully requests that the Court rehear the summary dismissal matter and allow this appeal to move forward.

(Signature page follows)

asserts that even if the denial of a jury trial pursuant to the United States Constitution is not ripe for appeal, the right to a jury trial and grand jury indictment under the South Carolina Constitution are

February 9, 2022

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immediately appealable.

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Certificate of Service

I certify that on this date, I served the Petition for Rehearing by emailing a copy to Respondent's counsel.

February 9, 2022

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In Re Frederick DeBerry Petition for Rehearing

1 message

Tristan Shaffer <tristan@shafferlawsc.com>

Wed, Feb 9, 2022 at 5:22 PM

To: William Blitch <wblitch@scag.gov>

Please find the attached.

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Tristan Michael Shaffer



petition for rehearing.pdf

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