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Mar 23 2022

SC Court of Appeals

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

The State,

Respondent,

vs.

Ahmand Deshod McKnight,

Defendant,

In re: Frederick DeBerry,

Appellant.

RETURN TO PETITION FOR REHEARING

On February 9, 2022, this Court properly issued an order summarily dismissing the appeal. Appellant has provided no new or additional argument and has not identified any argument overlooked or misapprehended by the Court in reaching its determination that the appeal is an improper interlocutory appeal and should be dismissed. As a result, this Court should deny the Petition for Rehearing.

Appellant has no right to a jury trial as a result of the lower court's determination no sentence in excess of six months will be considered in a criminal contempt proceeding. Whether this issue is contemplated under the South Carolina Constitution or United States Constitution, the analysis for the ruling would be the same.¹

¹ Initially, the State incorporates its argument from its Memorandum Regarding Appealability.

Additionally, pursuant to Section 14-3-330 of the South Carolina Code, the issues raised by Appellant in the Order of the circuit court are not immediately appealable.

First, the only possibly applicable subsection would be 14-3-330(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(2) (Supp. 2021). None of the rulings by the circuit court in effect determine the action and prevent a judgment from which an appeal might be taken.

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)). Appellant is not entitled to a jury trial because the circuit court indicated the sentence considered would be six months or less.

Additionally, any argument, whether related to a jury trial or the lack of an indictment, can be raised by Appellant at a later time. Both can be addressed after his contempt hearing, and neither would be precluded by this Court’s dismissal. The jury trial issue, as discussed above, is only appealable if entitled as a matter of right to the jury trial. The indictment issue would be appealable just as any indictment issue raised pretrial by any defendant.²

² The State also notes there is no possible merit to the requirement of a Grand Jury Indictment prior to proceeding on a claim of criminal contempt of court. To require a

CONCLUSION

For all of the foregoing reasons, the State requests the panel deny the petition for rehearing.

Respectfully submitted,

ALAN WILSON
Attorney General

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Senior Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

March 23, 2022

prosecutor to go to a Grand Jury and obtain an indictment would directly restrict and harm a court's inherent power of contempt and its inherent power to enforce its orders. See Ex parte Cannon, 385 S.C. 643, 660, 685 S.E.2d 814, 824 (Ct. App. 2009) (“All courts have the inherent power to punish for contempt, which ‘is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the courts, and consequently to the due administration of justice.’ ” (quoting Miller v. Miller, 375 S.C. 443, 453, 652 S.E.2d 754, 759 (Ct. App. 2007))).

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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the Return to Petition for Rehearing 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 23rd day of March, 2022.



CAROLINE COLLINS

Administrative Coordinator
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Caroline Collins

From: Caroline Collins
Sent: Wednesday, March 23, 2022 4:50 PM
To: tristan@shafferlawsc.com
Cc: William Blicht
Subject: In Re: Frederick DeBerry (2021-001442)
Attachments: In re. Frederick DeBerry - Return to Petition for Rehearing - 2021-001442 (02932731xD2C78).PDF

Good Afternoon Mr. Shaffer,

Attached please find the Return to Petition for Rehearing in In Re: Frederick DeBerry (2021-001442). This return will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System.

If you will, please reply to confirm receipt.

Thank you!

CAROLINE COLLINS, Administrative Coordinator
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