

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From Wilkes</u>
)	
AMANDA LEA ROSE)	

MOTION TO DISMISS APPEAL

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES OF THE NORTH CAROLINA COURT OF APPEALS

The State of North Carolina, by and through Roy Cooper, Attorney General, and Joseph L. Hyde, Assistant Attorney General, respectfully requests that this Court enter an order dismissing the appeal in this case. In support of this motion, the State shows as follows.

PROCEDURAL HISTORY

1. Defendant was twice cited on 21 October 2010 for driving without a seatbelt properly fastened about her body in violation of North Carolina General Statute section 20-135.2A(a). (R p. 74)
2. Defendant appeared in District court, was adjudicated responsible, and appealed to the Superior Court. (R p. 73)
3. Before trial, Defendant filed a motion to dismiss, challenging jurisdiction. On 12 September 2011, the Superior Court conducted a hearing on the motion. By order dated 29 September 2011, the Superior Court denied Defendant's motion. (R p. 72)
4. Defendant timely filed notice of appeal. (R p. 76)

REASONS WHY THE APPEAL SHOULD BE DISMISSED

"The right to appeal in a criminal proceeding is purely statutory. Generally, there is no right to appeal in a criminal case except from a conviction or upon a plea of guilty." State v. Shoff, 118 N.C. App. 724, 725, 456 S.E.2d 875, 876 (1995) (citation omitted), aff'd per curiam, 342 N.C. 638, 466 S.E.2d 277 (1996). Accordingly, appellate courts will typically not review interlocutory orders in a criminal case. State v. Fowler, 197 N.C. App. 1, 5, 676 S.E.2d 523, 531 (2009), disc. review denied, appeal dismissed, 364 N.C. 129, 696 S.E.2d 695 (2010). An interlocutory order is one made during the pendency of a case, which does not dispose of the matter but leaves it for further action by the trial court. Id. (quoting Veazey v. City of Durham, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950)). An order of the trial court denying a motion to dismiss is not a final judgment but is interlocutory. Shoff, 118 N.C. App. at 725, 456 S.E.2d at 876. An appeal of such an order must be dismissed. See id. (rejecting substantial rights analysis as inconsistent with statutes governing criminal appeals).

In the present case, Defendant filed a document in Superior Court "to challenge jurisdiction," citing General Statute section 15A-952(d) (stating motions concerning jurisdiction of the court may be made at any time). (R p. 6) In the motion, Defendant argued that the state of North Carolina lacked jurisdiction over her because the federal Reconstruction Acts of 2 March 1867, 23 March 1867, and 19 July 1867 - by which, she says, the current state was created - were unconstitutional. (R pp. 7-8) She sought proof of

jurisdiction or the cessation of the action against her. (R p. 8)

Defendant's motion may be characterized as a motion to dismiss for lack of jurisdiction. See N.C.G.S. 15A-954(a)(8) (2009) (stating the court on defendant's motion must dismiss the charges if it determines that the court has no jurisdiction of the offense charged). By order dated 29 September 2011, the trial court denied Defendant's motion to dismiss, finding it had jurisdiction over the person of Defendant and the subject matter. (R p. 74) It is from this order that Defendant now seeks to appeal.

Defendant recognizes in her notice of appeal that the matter is interlocutory. (R p. 76) She appears to contend that the appeal is authorized by General Statute section 7A-27(d), which provides that appeal lies directly to this Court "[f]rom any interlocutory order or judgment of a superior court or district court in a civil action or proceeding" which affects a substantial right or constitutes a final judgment. N.C.G.S. § 7A-27(d) (2009) (emphasis added). By its terms subsection (d) applies only to a civil action or proceeding, not to a criminal action such as this.

Defendant might have cited General Statute section 1-277, which states that "an appeal may be taken from every judicial order or determination of a judge of a superior or district court . . . which affects a substantial right claimed in any action or proceeding." This Court recognized in Shoff, however, that "reliance upon a substantial rights analysis as the basis for appellate review appears contrary to the plain and unambiguous language of the statutes governing criminal appeals." Shoff, 118

N.C. App. at 727, 456 S.E.2d at 878. Curiously, Defendant excerpts this very language without appearing to recognize its import. (R p. 76) The trial court's order denying Defendant's motion to dismiss was interlocutory. Defendant has no right to appeal from that interlocutory order. Accordingly, the appeal should be dismissed.

CONCLUSION

WHEREFORE, the State of North Carolina respectfully requests that this Court dismiss Defendant's appeal.

Electronically submitted this the 27th day of January, 2012.

Roy Cooper
ATTORNEY GENERAL

Electronically Submitted
Joseph L. Hyde
Assistant Attorney General

North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
(919) 716-6500
jhyde@ncdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing **MOTION TO DISMISS APPEAL** upon the DEFENDANT by placing a copy of same in the United States Mail, first class postage prepaid, addressed to his ATTORNEY OF RECORD as follows:

Amanda Lea Rose
9097 Concord Church Road
Lewisville, North Carolina 27023

This the 27th day of January, 2012.

Electronically Submitted
Joseph L. Hyde
Assistant Attorney General