IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

DALE LEE NORMAN,

Appellant,

v.

Case No. 4D12-3525
L.T. No.: 562012MM000530A

STATE OF FLORIDA,

Appellee.
_____/

APPELLEE'S SECOND MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION

Pursuant to Florida Rule of Appellate Procedure 9.300, Appellee, State of Florida, moves this Court to dismiss this appeal for lack of jurisdiction because the trial court's June 10, 2014 final judgment confers exclusive jurisdiction in the circuit court. In further support, Appellee states:

1. Appellant was charged by Information in county court with Open Carrying of a Weapon (a firearm) in violation of section 790.053, Florida Statutes (2012).

2. Pretrial, Appellant filed five motions to dismiss, challenging the statute's constitutionality.

3. However, the county court reserved ruling on Appellant's motions to dismiss and a jury found Appellant guilty as charged in the Information.

4. On August 14, 2012, the trial court *orally* sentenced Appellant, withholding adjudication, and imposed a fine and court costs.

5. Subsequently, on August 22, 2012, the trial court *denied* Appellant's five motions to dismiss and certified three questions of great public importance within the non-final order.

6. The August 22, 2012 order, however, did not confer discretionary jurisdiction with this Court. *See* §34.017(1); Fla. R. App. P. 9.030(b)(4)(B) ("*Discretionary Review*. District courts of appeal, in their discretion, may review by appeal . . . (B) non-final orders, *otherwise appealable to the circuit court under rule 9.140(c)* [i.e, state appeals], that the county court has certified to be of great public importance.") (emphasis added); *see also Hoffman v. Hall*, 817 So. 2d 1057, 1058 (Fla. 1st DCA 2002) (noting that an "order which merely grants a motion [in our case the court denied the motion] to dismiss but does not actually enter a final judgment is a nonfinal and nonappealable").

7. Thereafter, Appellant filed a Notice of Appeal with this Court, contending that he was appealing his "Judgment of Conviction and Sentence" rendered on August 14, 2012.

8. In response, the State sought to dismiss the appeal for lack of jurisdiction, which this Court denied on January 8, 2013.

9. Subsequently, on May 13, 2014, this Court *sua sponte* relinquished jurisdiction to the trial court for the purposes of rendering a written judgment and sentence in accordance with its oral pronouncement of August 14, 2012. However, as detailed below, the jurisdictional defect was not cured during remand.

10. Following relinquishment, on June 10, 2014, the trial court issued a written Judgment and Sentence, *nunc pro tunc* to August 14, 2012.

11. This "final judgment," however, confers exclusive jurisdiction in the circuit court, not this Court. *See* Fla. R. App. P. 9.030(c)(1)(A); §26.012, Fla. Stat.

12. According to the plain language of section 34.017(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(b)(4)(A), the trial court must certify issues of great public importance *within the final judgment* before this Court can obtain discretionary jurisdiction over this case. *See* §34.017(1), Fla. Stat.;[1] Fla. R.

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[1] **34.017. Certification of questions to district court of appeal**

(1) A county court is permitted **to certify a question to the district court of appeal in a final judgment** if the question may have statewide application, and:

(a) Is of great public importance; or

(b) Will affect the uniform administration of justice.

(2**) In the final judgment, the trial court shall**:

(a) Make findings of fact and conclusions of law; and

App. P. 9.030(b)(4)(A) ("*Discretionary Review*. District courts of appeal, in their discretion, may review by appeal (A) **final orders of the county court**, otherwise appealable to the circuit court under these rules, **that the county court has certified to be of great public importance**.") (emphasis added).

13. Accordingly, the State maintains that this Court still lacks jurisdiction to consider the instant appeal. *See State Farm Mut. Auto. Ins. Co. v. Atmore*, 790 So. 2d 1232, 1233 (Fla. 2d DCA 2001) (noting that the Florida Legislature has authorized county courts to certify issues of great public importance directly to the district court of appeal, "but only in *final judgments*") (emphasis added); *see also State Farm Mut. Auto. Ins. Co. v. USA Diagnostics, Inc.*, 696 So. 2d 1334 (Fla. 4th DCA 1997) (noting that the district court of appeal lacked jurisdiction under Florida

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(b) **State concisely the question to be certified**.

(3) The decision to certify the question to the district court of appeal is within the sole discretion of the county court.

(4) The district court of appeal has absolute discretion as to whether to answer a question certified by the county court.

(a) If the district court agrees to answer the certified question, it shall decide all appealable issues that have been raised from the final judgment.

(b) If the district court declines to answer the certified question, the case shall be transferred to the circuit court which has appellate jurisdiction.

§34.017, Fla. Stat. (2012) (emphasis added).

Rule of Appellate Procedure 9.030)(b)(4) to hear a county court appeal from a non-final order denying a motion to compel arbitration that certified a question of great public importance because the order being reviewed was not a final order).

WHEREFORE, Appellee respectfully requests that this Court dismiss this appeal for lack of jurisdiction.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished this 17th day of June, 2014, via electronic copy to: Eric Friday, Esq., at efriday@fletcherandphillips.com and familylaw@fletcherandphillips.com, Fletcher & Phillips, 541 S. Monroe Street, Suite 1, Jacksonville, FL 32202.

s/Cynthia L. Comras
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