

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RECARDO WEATHERSPOON	§	
	§	No. 193, 2005
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for Sussex County in Cr. ID
	§	No. 0001003156.
STATE OF DELAWARE,	§	
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: May 20, 2005

Decided: July 5, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 5th day of July 2005, upon consideration of the Clerk's notice to show cause pursuant to Supreme Court Rule 29(b) and the appellant's response to the notice, it appears to the Court that:

(1) The appellant, Recardo Weatherspoon, pleaded guilty in June 2000 to one count of Delivery of Cocaine and two counts of Conspiracy. By Order dated February 28, 2003, this Court affirmed the Superior Court's denial of Weatherspoon's motion for postconviction relief.¹ Subsequently,

¹*Weatherspoon v. State*, 2003 WL 723992 (Del. Supr.).

by Order dated March 15, 2004, the Court affirmed the Superior Court's denial of Weatherspoon's motion for modification of sentence.²

(2) On April 12, 2005, Weatherspoon filed a "motion compelling discovery materials" in the Superior Court. Weatherspoon sought to compel the production of "documents in the possession of the Office of the Prothonotary," including the police report, grand jury minutes, police warrant and "scientific tests." By order dated April 18, 2005, the Superior Court denied Weatherspoon's motion. On May 9, 2005, Weatherspoon filed a notice of appeal from the Superior Court's April 18 order.

(3) On May 9, 2005, the Clerk issued a notice directing that Weatherspoon show cause why this appeal should not be dismissed on the basis that the Court lacks jurisdiction to consider an appeal from an interlocutory order in a criminal case.³ On June 20, 2005, Weatherspoon filed a response to the notice to show cause. Weatherspoon's response does not, however, address the issue of this Court's lack of jurisdiction to entertain a criminal interlocutory appeal.

² *Weatherspoon v. State*, 2004 WL 542163 (Del. Supr.).

³ *See* Supr. Ct. R. 29(b) (providing that the Court upon notice or motion may dismiss an appeal from an unappealable interlocutory order).

(4) This Court has jurisdiction in a criminal appeal only from a final judgment of the Superior Court.⁴ In this appeal, the Superior Court's April 18, 2005 order denying Weatherspoon's "motion compelling discovery materials" is not a final judgment.⁵ As a result, the order is not appealable as a collateral order before the entry of a final judgment on a postconviction motion.⁶

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁴Del. Const. art. IV, § 11(1)(b).

⁵*Cooper v. State*, 2004 WL 3186198 (Del. Supr.); *Womer v. State*, 1991 WL 316971 (Del. Supr.).

⁶ See *Cooper v. State*, 2004 WL 3186198 (Del. Supr.) (determining that the denial of a motion to compel documents is an interlocutory order that is appealable from a final judgment in a postconviction proceeding).