

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| THOMAS A. MORGAN, | § |
| | § |
| Defendant Below, | § No. 261, 2005 |
| Appellant, | § |
| | § Court Below—Superior Court |
| v. | § of the State of Delaware, |
| | § in and for Sussex County |
| STATE OF DELAWARE, | § Cr. ID 92S05729DI |
| | § |
| Plaintiff Below, | § |
| Appellee. | § |

Submitted: July 14, 2005
Decided: August 4, 2005

Before **HOLLAND, BERGER,** and **JACOBS,** Justices.

ORDER

This 4th day of August 2005, it appears to the Court that:

(1) On June 20, 2005, the Clerk of this Court issued a notice, pursuant to Supreme Court Rule 29(b), directing the appellant, Thomas Morgan, to show cause why this appeal should not be dismissed based on this Court's lack of jurisdiction to entertain a criminal interlocutory appeal.¹ Morgan seeks to appeal from the Superior Court's order denying his "Motion for Release of Evidence."

(2) On July 1, 2005, Morgan filed a response to the notice to show cause. In his response, Morgan discusses the timeliness of his appeal. The notice to show

¹ Although the Notice to Show Cause cites to 10 *Del. C.* § 147, that statute does not address the Court's lack of jurisdiction to entertain an interlocutory appeal. The correct citation should have

cause, however, directed him to show cause why this matter should not be dismissed based on this Court's lack of jurisdiction to entertain a criminal interlocutory appeal, not based on untimeliness.

(3) On July 14, 2005, the State filed a reply to Morgan's response. The State asserts that, until Morgan files and the Superior Court finally rules upon a motion for postconviction relief, the Superior Court's denial of Morgan's motion for release of evidence is an interlocutory order.²

(4) We agree. Under the Delaware Constitution, only a final judgment may be reviewed by this Court in a *criminal* case.³ The denial of a motion for release of evidence is not a final appealable order, nor is it appealable as a collateral order before the entry of a final order on any postconviction motion. As a result, this Court has no jurisdiction to review Morgan's interlocutory appeal in this criminal case.⁴

NOW, THEREFORE, IT IS ORDERED that the appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

been to Del. Const. art. IV, § 11(1)(b). The reference to 10 *Del. C.* § 147 was made in error.

² See *In re Middlebrook*, Del. Supr., No. 185, 2000, Hartnett, J. (May 30, 2000).

³ Del. Const. art. IV, § 11(1)(b).

⁴ *Rash v. State*, 318 A.2d 603 (Del. 1974); *State v. Cooley*, 430 A.2d 789 (Del. 1981).