

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

ROBERT NELSON BALDWIN,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D08-2296

STATE OF FLORIDA,

Appellee.

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Opinion filed October 27, 2009.

An appeal from the Circuit Court for Bay County.  
Michael C. Overstreet, Judge.

Nancy A. Daniels, Public Defender, and Steven L. Seliger, Assistant Public  
Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Charlie McCoy, Senior Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

Robert Nelson Baldwin, challenges his conviction and sentence for lewd and  
lascivious molestation of a child less than twelve years of age. We affirm all  
issues on appeal, and write only to address Appellant's argument that the trial court  
lacked jurisdiction when the case was tried.

Prior to trial, Appellant moved in limine to exclude the testimony of certain  
collateral witnesses. The trial court granted the motion and excluded the witnesses

from testifying in the State's case-in-chief. The court orally granted a continuance when the prosecutor stated his intent to "appeal" the ruling. This court treated the State's "Notice of Interlocutory Appeal" as a petition for a writ of certiorari, granted the writ, and found that the trial court failed to make inquiries into reasonable alternatives prior to imposing a categorical exclusion. See State v. Baldwin, 978 So. 2d 807, 809 (Fla. 1st DCA 2008). After this court's opinion issued, but prior to the issuance of the mandate, Appellant's trial commenced and he was found guilty as charged. The trial court imposed Appellant's sentence after the mandate issued.

Appellant argues that any action taken by an appellate court divests the lower tribunal of jurisdiction until the appellate court's mandate is issued. The issue of jurisdiction is strictly a legal one. Therefore, this court reviews the trial court's jurisdiction de novo. Jacobsen v. Ross Stores, 882 So. 2d 431, 432 (Fla. 1st DCA 2004). Here, the State sought review of a non-final order with what this court treated as a petition for writ of certiorari. The filing of a petition for writ of certiorari involving a non-final order invokes this court's original jurisdiction. Fla. R. App. P. 9.030. In such instances, a lower court retains "continuing jurisdiction to enter all orders, including the final order disposing of the case, unless the appellate court has entered a stay or an order that otherwise prevents further action . . . ." Philip J. Padovano, Florida Appellate Practice §1.6 (Thomson West 2009).

See also Fla. R. App. P. Rule 9.130(f). Here, no such stay or order existed at the time of jury selection, trial, or judgment. Therefore, the trial court retained the necessary jurisdiction to proceed with each phase of trial.

Accordingly, we AFFIRM the trial court's imposition of judgment and sentence.

WOLF, WEBSTER, and CLARK, JJ., CONCUR.