

STATE OF LOUISIANA

NO. 14-KA-76

VERSUS

FIFTH CIRCUIT

ROBERT CHARLES MILLETTE

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 12-5536, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

OCTOBER 29, 2014

COURT OF APPEAL
FIFTH CIRCUIT

FILED OCT 29 2014

STEPHEN J. WINDHORST
JUDGE


CLERK
Cheryl Quirk Landrieu

Panel composed of Judges Robert A. Chaisson,
Robert M. Murphy and Stephen J. Windhorst

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APPEAL DISMISSED

JS
ZAC
JMM

The State has appealed the trial court's granting of defendant's motion to quash defendant's first predicate conviction in the bill of information charging defendant with third offense DWI, La. R.S. 14:98(A) (D). We dismiss this appeal for lack of jurisdiction.

Under La. C.Cr.P. art. 912A, "[O]nly a final judgment or ruling is appealable." A final judgment is one which puts an end to the proceedings. State v. Quinones, 94-436 (La. App. 5 Cir. 11/29/94), 646 So.2d 1216, 1217. Article 912B(1) further provides that the State may appeal "[a] motion to quash an indictment or any count thereof." However, when read and interpreted in reference to subsection A, a ruling on a motion to quash must be a final judgment that puts an end to the proceedings in order to be appealable. State v. Arceneaux, 13-953 (La. App. 5 Cir. 4/23/14), (unpublished).

In this case, we find that the trial court's quashing of one of the predicates does not put an end to the proceedings and, instead simply reduces the grade of the offense from a third offense DWI to a second offense DWI by eliminating the use of that particular conviction. Thus, it is not a final, appealable judgment, and therefore the State's proper avenue to seek review is by an application for writ of review. Arceneaux, supra. See State v. Myles, 04-677 (La. App. 5 Cir. 1/25/05), 894 So.2d 515.

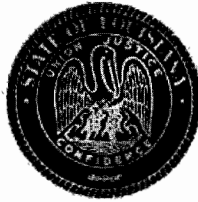
Accordingly, we dismiss the present appeal. We reserve to the State the right to file a proper application for supervisory writs, in compliance with U.R.C.A. Rule 4-3, within fifteen days from the date of this decision. Further, we construe the motion for appeal as a notice of intent to seek a supervisory writ so the State is not required to file a notice of intent nor obtain an order setting a return date pursuant to U.R.C.A. Rule 4-3. State v. Donaldson, 13-703 (La. App. 5 Cir. 11/19/13), 130 So.3d 394.

APPEAL DISMISSED

SUSAN M. CHEHARDY
CHIEF JUDGE

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**NOTICE OF JUDGMENT AND
CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **Uniform Rules - Court of Appeal, Rule 2-20** THIS DAY **OCTOBER 29, 2014** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:



CHERYL Q. LANDRIEU
CLERK OF COURT

14-KA-76

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