

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

16-660

STATE OF LOUISIANA

VERSUS

TIMOTHY BERNARD, SR.

**APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE, NO. CR156199
HONORABLE RONALD D. COX, JUDGE PRO TEMPORE**

**MARC T. AMY
JUDGE**

Court composed of Sylvia R. Cooks, Marc T. Amy, and Billy H. Ezell, Judges.

**APPEAL DISMISSED. DEFENDANT-APPELLANT
IS PERMITTED TO FILE AN APPLICATION FOR
SUPERVISORY WRITS WITHIN FIFTEEN DAYS
FROM THE DATE OF THIS DECISION.**

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State of Louisiana**

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AMY, Judge.

In June 15, 2015 proceedings in the City Court of Lafayette, Defendant-Appellant, Timothy Bernard, Sr., entered a plea of not guilty to criminal mischief, a violation of City Ordinance 62-32(7), in docket number 15-901; battery on a police officer, a violation of City Ordinance 62-67.1, in docket number 15-902; and resisting an officer, a violation of City Ordinance 62-66, in docket number 15-903.

On November 25, 2015, the city court judge found Defendant-Appellant guilty of battery on a police officer in docket number 15-902 and resisting an officer in docket number 15-903. The criminal mischief charge in docket number 15-901 was dismissed.

For the battery on a police officer conviction, the city court judge ordered Defendant-Appellant to pay a fine and courts costs of \$210.00 or, in default of payment, serve twenty-one (21) days in the Lafayette Parish Correctional Center. Additionally, he was sentenced to thirty (30) days in the parish jail, suspended, and he was placed on unsupervised probation for a term of six (6) months. For the resisting an officer charge, the city court judge ordered Defendant-Appellant to pay a fine and costs in the amount of \$260.00 or, in default of payment, serve twenty-six (26) days in the Lafayette Parish Correctional Center; the court suspended these fines and costs. Additionally, the city court judge sentenced Defendant-Appellant to fifteen days (15) days in the parish jail and, if eligible, permitted the jail term to be served through home incarceration with electronic monitoring. The trial court further imposed certain conditions on that term of home incarceration.

On December 11, 2015, Defendant-Appellant filed a "MOTION FOR APPEALS" with the Lafayette Parish City Court. The court denied Defendant-

Appellant's motion for appeal on December 15, 2015, "reserving all rights to the defendant to refile this appeal with the 15th Judicial District Court, Lafayette Parish, which is the Court of proper appellate jurisdiction."

Subsequently, Defendant-Appellant filed a "MOTION FOR APPEALS" with the Fifteenth Judicial District Court. On April 15, 2016, Defendant-Appellant filed a "BRIEF" with the district court "IN SUPPORT OF DISMISSING THESE CHARGES ON GROUNDS OF TECHNICALITIES." On April 22, 2016, attorneys for the City of Lafayette filed a "MEMORANDUM IN OPPOSITION TO DEFENDANT'S APPEAL" with the district court. Thereafter, and by ruling dated April 25, 2016, the district court explained that, after review of the entire record, it found that "the decision of the City Court should not be disturbed and that the Appeal and/or Request for Judicial Review should be dismissed with prejudice."

From the ruling of the Fifteenth Judicial District Court, Defendant-Appellant filed a motion for appeal to this court. An order of appeal was granted on June 13, 2016. On August 12, 2016, this court lodged the appeal record for this case. On August 22, 2016, this court issued a rule to show cause why this case should not be dismissed, as the judgment at issue is not an appealable judgment. *See* La.Code Crim.P. art. 912.1. No response was received by Defendant-Appellant.

On October 19, 2016, this court issued an opinion dismissing the appeal and allowing Defendant-Appellant time to file an application for supervisory writs. On October 26, 2016, this court was informed by Defendant-Appellant that the rule to show cause was inadvertently sent to Defendant-Appellant's previous address instead of his current address provided to the clerk's office by Defendant-

Appellant. The order states a signing date of June 13, 2015; however, a review of the record indicates the year should have been 2016.

On November 3, 2016, this court issued an order recalling the opinion issued on October 19, 2016. This court further ordered that Defendant-Appellant show cause by November 23, 2016, why the appeal should not be dismissed, as the judgment at issue is not an appealable judgment. La.Code Crim.P. art. 912.1. On November 28, 2016, Defendant-Appellant filed a “BRIEF” in response to the rule to show cause asking that this court “[a]ccept[] this brief to show that these charges are appealable and violate[] the Fourth Amendment of the United States Constitution.” The brief addresses the merits of the appeal.

The convictions are non-appealable to this court. *See* La.R.S. 13:1896(B). Therefore, we hereby dismiss Defendant-Appellant’s appeal. However, Defendant-Appellant is hereby permitted to file a proper application for supervisory writs, in compliance with Uniform Rules—Courts of Appeal, Rule 4-1, no later than fifteen days from the date of this decision. The Defendant is not required to file a notice of intent to seek writs nor obtain an order setting a return date pursuant to Uniform Rules—Courts of Appeal, Rule 4-3 as we hereby construe the motion for appeal as a timely-filed notice of intent to seek a supervisory writ.

APPEAL DISMISSED. DEFENDANT-APPELLANT IS PERMITTED TO FILE AN APPLICATION FOR SUPERVISORY WRITS WITHIN FIFTEEN DAYS FROM THE DATE OF THIS DECISION.