

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20100093-CA
v.)	
)	
Jonathan Wilbur Buie,)	F I L E D
)	(May 6, 2010)
)	
Defendant and Appellant.)	2010 UT App 117

Third District, Salt Lake Department, 091907399
The Honorable Paul G. Maughan

Attorneys: Debra M. Nelson, Salt Lake City, for Appellant
Mark L. Shurtleff and Marian Decker, Salt Lake City,
for Appellees

Before Judges Orme, Thorne, and Roth.

PER CURIAM:

Jonathan Wilbur Buie seeks to appeal the district court's order binding him over for trial on the charge of distribution of a controlled substance. This matter is before the court on its own motion for summary disposition on the basis that this court lacks jurisdiction because there is no final, appealable order.

This court does not have jurisdiction to consider an appeal unless it is taken from a final judgment or order or qualifies for an exception to the final judgment rule. See Loffredo v. Holt, 2001 UT 97, ¶¶ 10, 15, 37 P.3d 1070. An order is final only if it disposes of the case as to all parties and "finally dispose[s] of the subject-matter of the litigation on the merits of the case." Bradbury v. Valencia, 2000 UT 50, ¶ 9, 5 P.3d 649 (internal quotation marks omitted). "In a criminal case, it is 'the sentence itself which constitutes a final judgment from which the appellant has the right to appeal.'" State v. Bowers, 2002 UT 100, ¶ 4, 57 P.3d 1065 (quoting State v. Gerrard, 584 P.2d 885, 886 (Utah 1978)).

On December 29, 2009, the district court bound Buie over for trial on the charge of distribution of a controlled substance.¹ Buie has not been tried nor sentenced on the charge. Therefore, the bindover order was not a final, appealable order, and we lack jurisdiction over this matter. See id. Further, this court does not have jurisdiction to consider this case as an interlocutory appeal under Rule 5 of the Utah Rules of Appellate Procedure. See Utah R. App. P. 5(a)-(b) (requiring a petition for interlocutory appeal to be filed in the applicable appellate court within twenty days of the order sought to be appealed). When this court lacks jurisdiction, it must dismiss the appeal. See Loffredo, 2001 UT 97, ¶ 11.

The appeal is dismissed without prejudice to the filing of a timely appeal after the district court enters a final, appealable order.

Gregory K. Orme, Judge

William A. Thorne Jr., Judge

Stephen L. Roth, Judge

¹Buie, acting pro se at the time, filed a notice of appeal on January 27, 2010.