

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 16 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ISIAH HILL,)	2 CA-HC 2013-0006
)	DEPARTMENT A
Petitioner/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
THE STATE OF ARIZONA,)	Appellate Procedure
)	
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CV201202893

Honorable Bradley M. Soos, Judge Pro Tempore

APPEAL DISMISSED

Isiah Hill

Florence
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Isiah Hill appeals from the trial court’s dismissal without prejudice of his petition for writ of mandamus, in which he sought release from custody. Although Hill asserts jurisdiction is proper “pursuant to A.R.S. §§ 12-120, et seq. and 12-2101,” this court “has an independent duty to determine whether it has jurisdiction over an appeal.” *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, ¶ 4, 202 P.3d 536, 539 (App. 2009). A dismissal without prejudice is not an appealable order where, as here, it “is not

a final determination of the controversy on its merits, and is no bar to the prosecution of another suit timely commenced, founded upon the same cause of action.” *State ex rel. Hess v. Boehringer*, 16 Ariz. 48, 51, 141 P. 126, 127 (1914); *cf. Garza v. Swift Transp. Co.*, 222 Ariz. 281, ¶ 15, 213 P.3d 1008, 1011 (2009) (noting exception to final judgment rule, codified in § 12-2101(A)(3), where non-final order “‘in effect determines the action,’ as any refiled action would be barred” by statute of limitations), *quoting McMurray*, 220 Ariz. 71, ¶ 4, 202 P.3d at 539. Because the trial court’s order dismissing Hill’s petition without prejudice is not appealable, we lack jurisdiction to consider his appeal. *McMurray*, 220 Ariz. 71, ¶ 4, 202 P.3d at 539.

¶2 Accordingly, this appeal is dismissed.

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Michael Miller

MICHAEL MILLER, Judge