KATZ, J., dissenting. It is well settled that ''[t]his court's jurisdiction is limited by statute to appeals from final judgments; General Statutes §§ 51-197a, 52-263;[1] and [that] accordingly we have no discretion to enlarge our jurisdiction in abrogation of the final judgment rule.'' *State* v. *Southard*, 191 Conn. 506, 508, 467 A.2d 920 (1983). This final judgment rule ''serves the important public policy of discouraging the delays and inefficiencies attending piecemeal appeals. . . . That policy applies with particular force in criminal cases because, as both this court and the Supreme Court of the United States have recognized, undue litigiousness and leaden-footed administration of justice [are] particularly damaging to the conduct of criminal cases.'' (Citations omitted; internal quotation marks omitted.) Id., 509.

The appealable final judgment in a criminal case is ordinarily the imposition of sentence. *State* v. *Grotton*, 180 Conn. 290, 293, 429 A.2d 871 (1980). General Statutes § 54-96[2] permits the state to appeal from rulings and decisions of the Superior Court upon questions of law arising in criminal trials, provided that the appeal is from a final judgment. We previously have recognized, however, in both criminal and civil cases, that certain otherwise interlocutory orders may constitute final

judgments for purposes of appeal. ''An otherwise interlocutory order is appealable in two circumstances: (1) where the order or action terminates a separate and distinct proceeding, or (2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them.'' *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983). ''Unless the appeal is authorized under the *Curcio* criteria, absence of a final judgment is a jurisdictional defect that results in a dismissal of the appeal.'' *State* v. *Paolella*, 210 Conn. 110, 119, 554 A.2d 702 (1989).

''The first alternative, termination of a separate and distinct proceeding, requires the order being appealed to be severable from the central cause to which it is related so that the main action can 'proceed independent of the ancillary proceeding.' '' *In re Juvenile Appeal (85-AB)*, 195 Conn. 303, 307, 488 A.2d 778 (1985). The state makes no claim in this case that the trial court order denying its demand for a jury trial terminated a separate and distinct proceeding. Rather, the state seeks to fit this case within the second prong of the *Curcio* test, arguing that, if the defendant's trial is permitted to proceed, the state will lose forever its right to challenge the trial court's vacating of the defendant's guilty plea . The state reasons that, if the defendant is convicted following a trial, the state's claim that the trial court improperly allowed the defendant to withdraw his plea will be moot, while if he is acquitted, any appeal by the state would be fruitless because the double jeopardy clause would prohibit the reinstatement of the judgment of conviction.

At the outset, I agree with the state's analysis of the double jeopardy issue. The decisions of the Supreme Court of the United States have reiterated often the principle that a ''judgment of acquittal, however erroneous, bars further prosecution on any aspect of the count and hence bars appellate review of the trial court's error.'' *Sanabria* v. *United States*, 437 U.S. 54, 69, 98 S. Ct. 2170, 57 L. Ed. 2d 43 (1978) (involving erroneous exclusion of evidence). Additionally, I recognize that, at first blush, the circumstances of this appeal appear to fit literally within the language of the second prong of the *Curcio* test, as the state contends. The issue as I see it, however, is whether the state may rely on the threat of double jeopardy to avoid the final judgment rule, without terminating the prosecution in order to appeal the trial court order. I would conclude that it cannot. ''The intent of that constitutional prohibition is to shield criminal defendants from repeated prosecution; for that reason, the prohibition cannot in and of itself be utilized by the state as a sword to obtain review of interlocutory orders that would be unavailable to the defendant.'' *State* v. *Southard*, supra, 191 Conn. 511–12.

In *State* v. *Ross*, 189 Conn. 42, 49–51, 454 A.2d 266 (1983), the state appealed from an allegedly improper

suppression of crucial evidence. That appeal was predicated upon a judgment of dismissal of the charges, with prejudice, entered on the state's own motion. Id., 45. Because the state's appeal in *Ross* was thus conditioned on its willingness to stake the outcome of the prosecution on reversing the trial court's order suppressing evidence, this court held that ''[a] decision by the state to obtain dismissal of a prosecution with prejudice is a sufficiently serious precondition to the right of appeal to provide adequate assurance that this procedure will not be resorted to lightly.'' Id., 50–51.

In *State* v. *Southard*, supra, 191 Conn. 512, this court dismissed the state's appeal of the trial court's order denying its demand for a jury trial because ''the state ha[d] not satisfied the precondition set down by *Ross*.'' The court concluded that, in the absence of any precedent supporting the state's position that the denial of its claim for a jury trial could have been reviewed by a pretrial appeal without putting into jeopardy the possibility of securing a conviction at a court trial, the state was not entitled to review of its claim. Although the court in *Ross* recognized the seriousness of the state's interest in the resolution of the jury trial issue, it emphasized that the final judgment rule, and consequently, this court's jurisdiction, ''has never turned upon the gravity of the claims that are denied interlocutory review.'' Id., 512.[3]

The state acknowledges that, because the drugs involved in this case have been destroyed, its ability to successfully prosecute the defendant at trial has been impaired significantly. Nevertheless, the state complains in its brief that it is not practical to ''require the state to nolle the underlying charges and have the case dismissed'' because, if the state were to prevail on appeal, ''it would have to move the trial court to vacate the dismissal and the nolle, file a new information, and have the defendant enter his plea again. Allowing the state to appeal the trial court's order vacating the defendant's judgment of conviction would be a much more efficient and sensible procedure that would maintain the status quo pending resolution of the appeal.''[4] As in *Southard*, the state's claim in the present appeal bears no significant distinction from ''any of the myriad evidentiary and procedural rulings which might possibly disadvantage the state during the course of a criminal proceeding, such as orders excluding evidence, requiring disclosure of information or granting changes of venue.'' *State* v. *Southard*, supra, 191 Conn. 512. Consequently, the state's claim here no more satisfies the second prong of *Curcio* than did the state's claim in *Southard*. As this court stated in *State* v. *Ross*, supra, 189 Conn. 50–51, and reiterated in *State* v. *Joyner*, 255 Conn. 477, 486–87 A.2d (2001), the state's willingness to have the charges dismissed provides the assurance that the appellate procedure has not been resorted to lightly.

The state also claims that General Statutes § 54-1j[5] gives this court jurisdiction to consider this appeal. That statute vests jurisdiction in the trial court to revisit a plea canvass after a sentence has been imposed; see *State* v. *Parra*, 251 Conn. 617, 741 A.2d 902 (1999); it does not confer jurisdiction on this court to consider an interlocutory appeal.

As this court previously has stated, ''unless the appeal is authorized under the *Curcio* criteria, absence of a final judgment is a jurisdictional defect that results in a dismissal of the appeal.'' *State* v. *Paolella*, supra, 210 Conn. 119; see *Guerin* v. *Norton*, 167 Conn. 282, 283, 355 A.2d 255 (1974). Therefore, I would dismiss the state's appeal.

Accordingly, I respectfully dissent.

[1] General Statutes § 51-197a (a) provides: ''Appeals from final judgments or actions of the Superior Court shall be taken to the Appellate Court in accordance with section 51-197c, except for small claims, which are not appealable, appeals within the jurisdiction of the Supreme Court as provided for in section 51-199, appeals as provided for in sections 8-8 and 8-9, and except as otherwise provided by statute.''

General Statutes § 52-263 provides: ''Upon the trial of all matters of fact in any cause or action in the Superior Court, whether to the court or jury, or before any judge thereof when the jurisdiction of any action or proceeding is vested in him, if either party is aggrieved by the decision of the court or judge upon any question or questions of law arising in the trial, including the denial of a motion to set aside a verdict, he may appeal to the court having jurisdiction from the final judgment of the court or of such judge, or from the decision of the court granting a motion to set aside a verdict, except in small claims cases, which shall not be appealable, and appeals as provided in sections 8-8 and 8-9.''

[2] General Statutes § 54-96 provides: ''Appeals from the rulings and decisions of the Superior Court, upon all questions of law arising on the trial of criminal cases, may be taken by the state, with the permission of the presiding judge, to the Supreme Court or to the Appellate Court, in the same manner and to the same effect as if made by the accused.''

[3] Not only is the gravity of the claim not controlling, but the obvious gain in judicial efficiency that could be realized whenever a full trial can be avoided also is not determinative; see *State* v. *Spendolini*, 189 Conn. 92, 97, 454 A.2d 720 (1983) (denial of accelerated rehabilitation not final judgment for appeal purposes; right can be vindicated after trial); nor does the level of sacrifice that the party seeking review must make influence our jurisdiction. Indeed, General Statutes § 54-94a, for example, requires a defendant to plead nolo contendere to an offense in order to gain review of an adverse trial court decision on a motion to suppress, even when the evidence in question is the only evidence linking the defendant to the crime.

[4] I note that a remand in this case, had the state properly dismissed the charges prior to filing its appeal, would be less complicated than the state's scenario threatens. If the state were to prevail on appeal, as it in fact does here, the trial court could be ordered, as part of this court's remand, to vacate the dismissal and reinstate the guilty plea and the sentence.

[5] General Statutes § 54-1j provides: ''Court instruction on possible immigration and naturalization ramifications of guilty or nolo contendere plea. (a) The court shall not accept a plea of guilty or nolo contendere from any defendant in any criminal proceeding unless the court advises him of the following: 'If you are not a citizen of the United States, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States.'

''(b) The defendant shall not be required at the time of the plea to disclose his legal status in the United States to the court.

''(c) If the court fails to advise a defendant as required in subsection (a) of this section and the defendant not later than three years after the acceptance of the plea shows that his plea and conviction may have one of the

enumerated consequences, the court, on the defendant's motion, shall vacate the judgment, and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty.''