IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STEVEN A. AUGUSIEWICZ, Appellant,	)	
	)	
v.	)	ID No. 0701026252
	)	
STATE OF DELAWARE, Appellee.	)	

Submitted: May 14, 2009
Decided: August 31, 2009

MEMORANDUM OPINION

William J. Rhodunda Jr., Esquire and Chandra J. Rudloff, Esquire, WolfBlock LLP, Wilmington, Delaware, Attorneys for the Appellant.

Harshal Purohit-Patel, Esquire, Assistant New Castle Attorney, Wilmington, Delaware, Attorney for the Appellee.

THE PROCEEDINGS

Steven Augusiewicz owns 21 acres of land on Bohemia Mile Road in Middletown, which is assessed by the County as farmland. In 2006 the County alleged that Augusiewicz was operating a "commercial construction/demolition business" on his property and issued 19 criminal citations to him for alleged County Code violations relating to that property.[1]

The charges were instituted in the Justice of the Peace Courts, which has original jurisdiction to hear charges of county code violations.[2] Augusiewicz moved to dismiss those charges, arguing that New Castle County lacked authority under the Delaware constitution and state law to regulate his property because it is farmland. He contended that the Delaware constitution prohibits the General Assembly from allowing counties to enact zoning ordinances that regulate land used for agricultural purposes[3] and that the General Assembly, in accordance with its constitutional obligation, forbade counties from regulating "any land, building, greenhouse or other structure proposed to be devoted to any agricultural use."[4] The County countered that the property was not farmland, but was being used as a salvage yard and therefore was not

[1] The County alleged violations of 40 New Castle County Code §0003:4104; PM New Castle Code §§0302:0011; 0302:0084 (4 counts); UD New Castle County Code §0003:0110 (13 counts). In a nutshell these charges involve allegations of leaving oversized vehicles on the property; using residential property for business purposes; outside storage of debris and construction of an office or accessory building on a property without a primary residence located on it.
[2] 11 *Del. C.* §5917.
[3] Del. Const. art. II, §25.
[4] 9 *Del. C.* §2601(b).

subject to the constitutional and statutory prohibition on regulation of farmland.

The Magistrate initially denied Augusiewicz's motion, but upon a motion for reargument, reconsidered and granted the motion to dismiss. The County appealed to the Court of Common Pleas, which reversed the Justice of the Peace and remanded the matter for a trial on the merits. Augusiewicz now appeals the Court of Common Pleas' decision.

The parties briefed the merits before this Court. Shortly before oral argument the Court advised the parties that it questioned its jurisdiction to hear this appeal because, in light of the Court of Common Pleas' remand, there was no final judgment. After oral argument the parties at the Court's request, made written submissions on the jurisdictional issue.

ANALYSIS

I. The order from which Augusiewicz appeals is interlocutory

Augusiewicz argues that the decision of the Court of Common Pleas is not interlocutory because it sustains the jurisdiction of the Justice of the Peace to entertain the charges against him. "A final judgment is generally defined as one which determines the merits of the controversy or the rights of the parties and leaves nothing for future determination or consideration."[5] Criminal proceedings become final only

[5] *Showell Poultry, Inc. v. Delmarva Poultry Corp.*, 146 A.2d 794, 796 (Del. 1958).

when the sentence is imposed.[6] It is manifest that there is no final judgment here because no sentence has been imposed. The decision of the Court of Common Pleas amounts to a denial of Augusiewicz's motion to dismiss the charges against him. Such denials are interlocutory and not subject to appeal.[7]

Augusiewicz relies upon three opinions of the Delaware Supreme Court to support his contention that the Court of Common Pleas' judgment is final.[8] But each of those cases involved a writ of prohibition. A writ of prohibition is an ancient writ used to prohibit a lower court from acting without jurisdiction or exceeding its jurisdiction.[9] By its nature, the writ is not appropriate where a final judgment has already been rendered.[10] In each of the cases cited by Augusiewicz the Supreme Court found there was no final judgment. Accordingly, they are of no help to Augusiewicz.[11]

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[6] *Eller v. State*, 531 A.2d 948, 950 (Del. 1987).

[7] *In re Hovey*, 545 A.2d 626, 627 (Del. 1988) ("The Superior Court's denial of Hovey's motion to dismiss the indictment constitutes an interlocutory ruling in a criminal proceeding."). In civil matters a remand by an intermediate appellate court does not constitute a final judgment. *Simons v. Delaware State Hospital*, 1994 WL 267273, at *2 (Del. June 7, 1994) ("It is settled Delaware law that an order of remand by the Superior Court to the Industrial Accident Board is an interlocutory and not a final order.") (internal quotation marks omitted).

[8] *Hodsdon v. Superior Court*, 239 A.2d 222 (Del. 1968); *Radusczewski v. Superior Court*, 232 A.2d 95 (Del. 1967); *Bennethum v. Superior Court*, 153 A.2d 200 (Del. 1959).

[9] *In re Hovey*, 545 A.2d at 628-30.

[10] *In re Carter*, 2008 WL 5061144 (Del. Dec. 1, 2008).

[11] Augusiewicz did not seek a writ of prohibition but rather sought to proceed by appeal. A writ of prohibition would likely have been futile here. The Supreme Court has opined that the denial of a motion to dismiss an indictment will not give rise to a writ of prohibition:

> For the purpose of appeal to this Court, a criminal proceeding becomes final on the date the sentence is imposed by the trial judge. The Superior Court's denial of Hovey's motion to dismiss the indictment constitutes an interlocutory ruling in a criminal proceeding. Since this Court does not have jurisdiction to receive an interlocutory appeal in a criminal case, a writ of prohibition may not be used to accomplish indirectly what may not be done directly.

II. This court lacks jurisdiction to hear interlocutory criminal appeals

There is a long-standing and widely held policy against piecemeal litigation. The courts of this state, as well as of other jurisdictions, have often opined that piecemeal litigation promotes delays, unnecessarily consumes scarce judicial resources and impairs the ability of courts to manage their dockets. The policy against piecemeal litigation manifests itself in several procedural rules, but perhaps is no more apparent than in the rules disfavoring or precluding interlocutory appeals.

It is against this policy backdrop that the Court must examine the state constitutional provisions, statutes and its own rules governing appeals. The provision of the Delaware constitution conferring appellate jurisdiction upon this Court delegates to the General Assembly the role of defining that jurisdiction; it requires only that the legislature provide for appeals for persons sentenced to more than 30 days or fined more than one hundred dollars in the lower courts. The General Assembly created a broad appellate jurisdiction which would allow for the appeal of virtually any order or ruling in a criminal matter in the lower court. It deferred, however, to the Judiciary in matters of procedure and provided by statute that court procedural rules will supersede any contrary legislative enactments. In the exercise of its rule-making authority, this Court has lawfully narrowed the broad jurisdiction conferred upon it by the General

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In re Hovey, 545 A.2d at 627-8 (Del. 1988) (citations omitted).

Assembly by limiting its criminal appellate jurisdiction to appeals from final judgments.

A. Public policy disfavors interlocutory appeals

Delaware courts have long adhered to a policy of avoiding piecemeal litigation. This policy is driven by the universally recognized need to "make efficient us of judicial resources,"[12] to facilitate "the proper administration of justice,"[13] to avoid delays,[14] and in the instance of criminal matters, to provide quick resolution because of "the importance to the public of speedy law enforcement."[15] The policy has been long-standing throughout the country. Indeed, only thirteen years after the fall of the Alamo, the Texas Supreme Court referred to the "well-settled practice and sound public policy which forbids the cutting up and deciding a case piecemeal."[16]

The policy against piecemeal litigation manifests itself in areas of the law apart from questions of appellate jurisdiction. For example, the common law rule prohibiting the splitting of one cause of action "is rooted in the need to protect a defendant from multiplicity of suits and their attendant harassment. An equally compelling consideration is one founded on public policy: piecemeal litigation of a single cause of action

[12] *Tyson Foods, Inc. v. Aetos Corp.*, 809 A.2d 575, 580 (Del. 2002).
[13] *Hodsdon*, 239 A.2d at 225.
[14] *Ownbey v. Morgan*, 105 A. 838, 844 (Del. 1919).
[15] *State v. Roberts*, 282 A.2d 603, 605 (Del. 1971).
[16] *Allen v. Menard*, 1849 WL 4096, at *1 (Tex. 1849).

is contrary to the orderly administration of justice.[17] The Court of Chancery has jurisdiction to resolve ancillary law claims under the clean-up doctrine because that doctrine "serves to avoid piecemeal litigation, to conserve scarce judicial resources, to limit costs to litigants and the public, and to decrease the risk of inconsistent verdicts."[18]

The most common manifestation of the policy, however, is found in the final judgment rule. That rule limits the appellate jurisdiction of a court to appeals from final judgments. In 1919 the predecessor of the modern Supreme Court described the rule and its purpose this way:

> A writ of error cannot be taken until after final judgment. Finality of decision is essential to a right of review as a rule of convenience, to avoid delays from separate appeals of each of the steps in the cause as they occur. Therefore, the right to review these several steps is held in abeyance until the cause has reached a stage when all of the appealable steps can be reviewed in a single appeal involving the whole cause.[19]

Since that time the Delaware courts have repeatedly referred to the "strong policy" against piecemeal appeals embedded in the final judgment rule.[20] The same policy has long been embraced by the federal courts where "[f]inality as a condition of review is an historic

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[17] *Webster v. State Farm Mutual Automobile Insurance Co.*, 348 A.2d 329, 331 (Del. Super. 1975) (internal citation omitted).
[18] *Quereguan v. New Castle County*, 2006 WL 2522214 (Del. Ch., Aug. 18, 2006) (internal quotation marks omitted).
[19] *Ownbey*, 105 A. at 844.
[20] *E.g.*, *Thompson v. Thompson*, 2004 WL 2297396 (Del. Oct. 5, 2004) (referring to the "strong policy of this Court not to accept piecemeal appeals from a single proceeding in a trial court"); *In re Explorer Pipeline Co.,* 2001 WL 1009302 (Del. Ch., Aug. 29, 2001) (noting that "strong public policy that piecemeal appeals should not be presented to the Delaware Supreme Court.").

characteristic."[21] In *Flanagan v. United States*[22] the Supreme Court observed that several interests militate against piecemeal appeals:

> The final judgment rule serves several important interests. It helps preserve the respect due trial judges by minimizing appellate-court interference with the numerous decisions they must make in the pre-judgment stages of litigation. It reduces the ability of litigants to harass opponents and to clog the courts through a succession of costly and time-consuming appeals. It is crucial to the efficient administration of justice.[23]

The final judgment rule is of particular significance in criminal matters because of the need for speedy resolution of those proceedings. The Court realizes, of course, that it is the defendant who has sought to appeal here and that defendants may waive their right to a speedy trial.[24] There is, however, "a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused."[25] This interest is not lessened because the criminal defendant is willing to accept the delay attendant to an interlocutory appeal.

Augusiewicz argues that this Court should broadly construe its jurisdiction. According to him a remand would require him "to wait through two appeals" before coming back to this Court to present his argument on the merits. Although at first blush this argument has some

[21] *Cobbledick v. United States*, 309 U.S. 323, 324 (1940).
[22] 465 U.S. 259 (1984).
[23] *Id*. at 263-4. The Delaware Supreme Court, though not bound by federal law in this area, expressly endorsed the view expressed in *Flanagan*. *Gottlieb v. State*, 697 A.2d 400, 402 (Del. 1997).
[24] *E.g.*, *Bruce v. State*, 781 A.2d 544 (Del. 2001) (considering whether the defendant waived his right to a speedy trial under an interstate detainer).
[25] *Barker v. Wingo*, 407 U.S. 514, 519 (1972).

appeal, it must be rejected. The United States Supreme Court rejected a similar argument in *United States v. Hollywood Motor Car Co., Inc.*[26]:

> [T]here is a superficial plausibility to the contention that any claim, particularly a constitutional claim, that would be dispositive of the entire case if decided favorably to a criminal defendant, should be decided as quickly as possible in the course of the litigation. But if such a principle were to be applied, questions as to the constitutionality of the statutes authorizing the prosecution and doubtless numerous other questions would fall under such a definition, and the policy against piecemeal appeals in criminal cases would be swallowed by ever-multiplying exceptions.[27]

Delaware courts have also reached the same conclusion:

> Prompt review of interlocutory rulings in criminal cases might in some cases be desirable, but our basic constitutional policy is against it, no doubt because of the importance to the public of speedy trial enforcement.[28]

If the Court were to grant the right of appeal to Augusiewicz in this matter, there would be no intellectually honest reason why it could deny immediate review to almost any other future defendant in the Court of Common Pleas who is disgruntled with a ruling of that court. Accordingly, despite the Court's reluctance to delay a ruling on the merits, the overarching policy against piecemeal litigation prevents the Court from attempting to carve out an artificial exception for Augusiewicz.[29]

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[26] 458 U.S. 263 (1982).
[27] *Id*. at 270.
[28] *Norman v. State*, 177 A.2d 347, 349 (Del. 1962).
[29] This is not an intimation that Augusiewicz would prevail on the merits if the Court considered them. At this juncture the Court has no view on those merits.

B. As a matter of policy, this Court has limited its appellate jurisdiction to appeals from final judgments

1. The Delaware Constitution allows the General Assembly to define this Court's appellate jurisdiction

The analysis here begins with a consideration of the constitutional basis for this Court's appellate jurisdiction. Section 28 of article IV of the Delaware Constitution grants appellate jurisdiction to this Court. That section provides:

> The General Assembly may by law regulate this jurisdiction …and may grant or deny the privilege of appeal to the Superior Court; provided however, that there shall be an appeal to the Superior Court in all cases in which the sentence shall be imprisonment exceeding one (1) month or a fine exceeding One Hundred Dollars ($100.00).[30]

In short, the constitution left to the General Assembly the job of defining the contours of the Court's appellate jurisdiction. The only requirement imposed upon the General Assembly was that it must provide for an appeal of any conviction resulting in a sentence exceeding thirty days or any fine exceeding one hundred dollars.

There is a short line of cases interpreting section 28 as precluding an appeal unless the defendant was sentenced to at least one month in confinement or fined at least one hundred dollars. If those cases were correctly decided, they would be dispositive of this appeal. In 1963 this Court decided *State v. Campbell*,[31] which over the years has been

[30] Del. Const., art.IV, §28.
[31] 190 A.2d 610 (Del. Super. 1963).

followed in a handful of opinions from this Court.[32] The gist of *Campbell* and those cases which followed it is that "[w]hen the sentence falls below these constitutional minimums, the defendant cannot seek an appeal [from the Court of Common Pleas] in this Court."[33] This Judge respectfully believes, however, that the reasoning of *Campbell* and its few progeny was not correct and the Court will not now adopt it. Thus *Campbell* and its progeny do not end the inquiry here.

In *Campbell*, the defendants in a Municipal Court criminal proceeding appealed to this Court from a sentence of one month in jail and a fine of $100. The State sought to dismiss the appeal because the sentence did not *exceed* one month and the fine did not *exceed* 100 dollars. Relying upon the language in section 28 that "there shall be an appeal to the Superior Court in all cases in which the sentence shall be imprisonment exceeding one month or a fine exceeding one hundred dollars," the Court concluded that there was no appeal from any conviction not meeting these standards.[34]

The difficulty with *Campbell*, and those cases which followed it, is that this Court did not consider the context of the language it quoted

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[32] *Tucker v. State*, 2003 WL 21517882 (Del. Super., July 2, 2003); *Hurst v. State*, 2003 WL 1387136 (Del. Super. Feb. 11, 2003); *Freeman v. State*, 1998 WL 278395 (Del. Super., March 19, 1998).

[33] *Hurst*, 2003 WL 1387136 at *1.

[34] The bulk of this Court's opinion in *Campbell* was devoted to the question whether a sentence of precisely one month and one hundred dollars satisfied the perceived constitutional minimum. This Court held that it did. *Campbell* was expressly overruled nearly twenty years later by the Delaware Supreme Court in *Marker v. State*, 450 A.2d 397 (Del.1982) when that Court held that a sentence of precisely one month or a fine of $100 did not satisfy the constitutional minimum for appeals to the Delaware Supreme Court. The *Marker* court expressed no opinion as to the jurisdiction of this Court to entertain appeals in criminal cases.

from section 28. A fuller examination of that section reveals that, rather than specify a minimum sentence which could be appealed, section 28 provides that the General Assembly may grant or deny the right of appeal to this Court so long as it *at least* provided for an appeal from sentences exceeding one month or fines exceeding $100. Nothing in section 28, therefore, precludes the General Assembly from granting appellate jurisdiction from convictions arising from lesser sentences. In other words, section 28 does not, by itself, preclude this Court from asserting appellate jurisdiction over convictions resulting in lesser sentences or, for that matter, over interlocutory appeals. Because the rationale in *Campbell* and its progeny was, in this Judge's view, erroneous, they are not dispositive of the issue now before the Court.

2. The General Assembly vested this Court with broad criminal appellate jurisdiction but has also allowed this court to narrow that jurisdiction

The General Assembly gave this Court almost unlimited jurisdiction to hear appeals from the Court of Common Pleas. In 11 *Del. C.* section 5301(c) it provided for appeals from "any order, rule decision, judgment or sentence of the Court in a criminal action."[35] If not circumscribed elsewhere, section 5301(c) would confer jurisdiction not

[35] 11 *Del. C.* §5301(c). That subsection provides in its entirety:

> From any order, rule decision, judgment or sentence of the Court in a criminal action, the accused shall have the right to appeal to the Superior Court in and for the county wherein the information was filed as provided in §28, article IV of the Constitution of the State. Such appeal to the Superior Court shall be reviewed on the record and shall not be tried de novo.

only to hear Augusiewicz's appeal but also a vast array of orders such as rulings on such matters as motions to suppress, motions to disqualify counsel or *Daubert* motions because they fall within the ambit of "any order, rule, decision [or] judgment."[36] Indeed it is difficult to envision any ruling, no matter how inconsequential, which would not be subject to an immediate appeal under section 5301(c). Such a result is wholly inimical to the policies served by the final judgment rule. The Delaware Supreme Court long ago counseled that such a result is to be avoided:

> [T]he procedure here urged upon us would permit review in criminal cases of rulings on motions to suppress evidence. This [is] a highly undesirable result.[37]

The inquiry does not end with section 5301, however. The General Assembly has long deferred to the expertise of the Judicial Branch in procedural matters. More than a half century ago our Supreme Court observed that:

> Increasingly, in recent years, it has been recognized by the bench and the bar, and by the public, that the mechanics of litigation--the pleadings, the motions, the whole body of practice --is a subject that should be regulated by rule of court. As early as 1925 our legislature conferred upon the judges unlimited rule-making power in civil cases and like authority in criminal cases was given by the act of 1951.[38]

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[36] Augusiewicz suggests that his motion is somehow different from motions to suppress, for example, and that section 5301, while granting jurisdiction to this Court to hear his motion, would not confer jurisdiction to hear other motions such as motions to suppress. He fails to point to any language in section 5301 to support his contention and this Court finds none.
[37] *Norman v. State*, 177 A.2d 347, 349 (Del. 1962).
[38] *Sibley v. State*, 102 A.2d 702, 706 (Del. 1954).

Shortly after it granted rule making authority to this Court[39] the General Assembly also provided in 11 *Del. C.* §5122 that "[a]ny inconsistency or conflict between any rule of court . . and any of the provisions of this Code or other statutes of this State, dealing with practice and procedure in criminal actions in the Superior Court shall be resolved in favor of such rule of court."[40] This statute "permits, indeed encourages, primacy of Superior Court criminal rules over those that may be found in statute."[41]

It is beyond question that this Court has the power to limit its appellate jurisdiction. Our Supreme Court has opined that:

> in the absence of a specific constitutional definition, the determination of what constitutes an appealable order is a policy decision to be made by the appellate tribunal.[42]

The Delaware constitution grants jurisdiction to hear interlocutory appeals in civil matters.[43] The Supreme Court itself exercised its prerogative to limit this jurisdiction when "[i]n adopting Supreme Court Rule 42 in 1981, [it] made a policy decision that appeals from [civil] interlocutory orders would not be accepted unless the order met certain criteria *and* special application to appeal was made to the trial court and

[39] 48 Del. Laws c. 209 (1951). Section 5122 was executed two years later.
[40] 11 *Del. C.* § 5122.
[41] *Vergara v. State*, 2001 WL 34083562, at *2 (Del. Super., Sept. 28, 2001).
[42] *Pollard v. The Placers, Inc.*, 692 A.2d 879, 881 (Del. 1997).
[43] Del. Const., art IV, §11 (1)(a). ("The Supreme Court shall have jurisdiction to "receive appeals from the Superior Court in civil causes and to determine finally all matters of appeal in the interlocutory or final judgments….").

this Court."[44] This Court has same power to limit its appellate jurisdiction.[45]

3. *This Court has chosen to limit its appellate jurisdiction to appeals from final judgments*

Pursuant to its rule making authority, this Court promulgated Criminal Rule 39, which governs criminal appeals to it. That rule limits appeals to appeals from final judgments. In particular it provides that "[a]ll appeals to the Superior Court shall be taken within 15 days from the date of sentence, unless otherwise provided by statute."[46] By requiring the filing of the notice of appeal within 15 days of the date of sentence, the rule necessarily excludes appeals from interlocutory orders in cases in which no sentence has been imposed. That is the case here.

Augusiewicz argues that the phrase "unless otherwise provided by statute" resurrects the broad jurisdiction allowed by section 5301. It does not. Rather it simply modifies "within 15 days of the date of sentence,"[47] and allows for a shorter or longer period of time in which to appeal should such a period of time be specified in a statute.

Augusiewicz also argues that Criminal Rule 39 incorporates Civil Rule 72, the latter of which (according to Augusiewicz) contemplates

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[44] *Acierno v. Hayward,* 859 A.2d 617, 619 (Del. 2004) (emphasis in original).

[45] The authority of this Court to override procedural statutes is co-extensive with that given to the Supreme Court. According to the Revision Note for 11 *Del. C.* § 5122 (1953), that section

> was inserted to make it clear that any rules of criminal procedure for the Superior Court adopted under the authority of section 5121 of this title, or prior law, are to be considered as prevailing over any provisions of this Code or other statute which may be in conflict with them. This is in conformity with the authority under such section for the Supreme Court to prescribe such rules.

[46] Superior Court Criminal Rule 39(a).

[47] *Vergara*, 2001 WL 34083562.

interlocutory appeals. From this he deduces that Criminal Rule 39 allows for interlocutory appeals. There are two flaws in this argument. First, Criminal Rule 39 does not incorporate Civil Rule 72 to the extent that is "inconsistent with a statute or [Superior Court Criminal] rules."[48] In the event that Civil Rule 72 might permit interlocutory appeals, that portion of Rule 72 is inconsistent with Criminal Rule 39(a) and is therefore not incorporated into Criminal Rule 39. Second, Civil Rule 72 cannot be read as allowing interlocutory appeals because this Court lacks jurisdiction to entertain interlocutory appeals in civil matters.[49] Civil Rule 72 cannot therefore be read to superimpose jurisdiction to hear interlocutory appeals in criminal matters.

CONCLUSION

This Court finds that it lacks jurisdiction to entertain this interlocutory appeal. The matter is therefore dismissed and remanded to the Justice of the Peace Court for proceedings consistent with the opinion and order of the Court of Common Pleas.

IT IS SO ORDERED.

oc: Prothonotary

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[48] Superior Court Criminal Rule 39(c).
[49] *Delafield's Inc. v. Avian Aquatics, Inc.*, 1999 WL 463814 (Del. Super., May 18, 1999).