

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELMER DANIELS,	§	
	§	No. 541, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 87002394DI
Appellee.	§	

Submitted: September 25, 2009

Decided: October 20, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 20th day of October 2009, it appears to the Court that:

(1) In 1980, a Superior Court jury convicted the appellant, Elmer Daniels, of Rape in the First Degree. Daniels was sentenced to life imprisonment. On direct appeal, this Court affirmed Daniels' conviction and sentence.¹ Thereafter, Daniels filed unsuccessful petitions for federal habeas corpus relief and state postconviction relief.²

(2) On September 15, 2009, Daniels filed a notice of appeal from the Superior Court's orders of September 2, 2009 that denied his motion for appointment of counsel and motion for discovery. On September 15, 2009,

¹ *Daniels v. State*, 445 A.2d 335 (Table) (Del. 1981).

² *See Daniels v. State*, 1997 WL 597126 (Del. Supr.) (affirming denial of second motion for postconviction relief). By order dated January 3, 2005, the Superior Court denied Daniels' fifth motion for postconviction relief. *State v. Daniels*, 2005 WL 148768 (Del. Super.).

the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing that Daniels show cause why the appeal should not be dismissed based upon this Court's lack of jurisdiction to entertain a criminal interlocutory appeal.

(3) On September 25, 2009, Daniels filed a response to the notice to show cause. In his response, Daniels contends that his motions for appointment of counsel and for discovery relate to a Superior Court final order issued on March 17, 1980 over which this Court has continuing "subject matter jurisdiction."

(4) Under the Delaware Constitution, only a final judgment may be reviewed by this Court in a criminal case.³ This Court has no jurisdiction to entertain an appeal from an interlocutory order in a criminal case.⁴ In this case, the orders of the Superior Court denying Daniels' motions are interlocutory orders and are not final criminal judgments.⁵ Therefore, this Court has no jurisdiction to consider Daniels' appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that this appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

³ Del. Const. art. IV, § 11(1)(b); *State v. Cooley*, 430 A.2d 789, 791 (Del. 1981).

⁴ *Id.*

⁵ *In re Shockley*, 2005 WL 2475731 (Del. Supr.) (citing *Gottlieb v. State*, 697 A.2d 400, 401-02 (Del. 1997)).