

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES STEWART,	§
	§ No. 398, 2004
Defendant Below,	§
Appellant,	§
v.	§ Court Below – Superior Court
	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. 0302014400
	§
Plaintiff Below,	§
Appellee.	§

Submitted: March 2, 2005

Decided: May 19, 2005

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

O R D E R

This 19th day of May 2005, it appears to the Court that:

1) This is an appeal in a criminal matter following the Superior Court's decision to reverse a ruling by the Court of Common Pleas and to remand the matter to the Court of Common Pleas for sentencing.

2) This Court has no jurisdiction to hear interlocutory appeals in a criminal proceeding.¹ Since a judgment is not final until a sentence has been

¹ See Del. Const. art. IV, § 11(1)(b); *Gottlieb v. State*, 697 A.2d 400, 401-02 (Del. 1997); *Perry v. State*, 575 A.2d 1154, 1155 (Del. 1990).

imposed,² this matter must be dismissed as an improper interlocutory appeal.³

3) After the defendant is sentenced in the Court of Common Pleas, he can file an appeal with the Superior Court and then to this Court, assuming that the Superior Court considers its prior decision to be the law of the case.

4) Following his sentencing, the defendant will have the right to seek a stay of execution in the event he seeks to avoid beginning his mandatory sentence of incarceration.⁴

NOW, THEREFORE, IT IS HEREBY ORDERED that this appeal is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

² *Perry v. State*, 575 A.2d at 1156 (citing *Eller v. State*, 531 A.2d 948, 950 (Del. 1987).

³ *Gottlieb v. State*, 697 A.2d at 401-02.

⁴ See Ct. Com. Pleas Crim. R. 37; Super. Ct. Crim. R. 38; Supr. Ct. R. 32; and Del. Code Ann. tit. 11, § 4502.