

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 21-4234**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

REED C. TANNER,

Defendant - Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Charleston. Richard Mark Gergel, District Judge. (2:20-po-00004-RMG-1)

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Submitted: March 7, 2022

Decided: June 29, 2022

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Before GREGORY, Chief Judge, and NIEMEYER and QUATTLEBAUM, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Reed C. Tanner, Appellant Pro Se. Katherine Anne Orville, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A federal magistrate judge conducted a bench trial and convicted Reed C. Tanner of disorderly conduct at a Department of Veterans Affairs facility—a petty offense.<sup>1</sup> The magistrate judge entered an order reflecting the finding of guilt and staying sentencing so that Tanner could appeal his conviction to the district court. The district court later entered an order affirming the conviction and remanding to the magistrate judge for sentencing. Before the magistrate judge could impose sentence, however, Tanner appealed the district court’s order to this court. After we denied Tanner’s motion to stay the sentencing hearing pending the resolution of this appeal, the magistrate judge sentenced Tanner and entered the criminal judgment. Tanner did not appeal the magistrate judge’s criminal judgment to the district court. Tanner’s informal brief filed in this appeal now challenges both his conviction and sentence. For the reasons explained below, we dismiss the appeal.

“[W]e have an independent obligation to verify the existence of appellate jurisdiction.” *Porter v. Zook*, 803 F.3d 694, 696 (4th Cir. 2015) (internal quotation marks omitted). “Under 28 U.S.C. §§ 1291 and 1292, we have jurisdiction only over final orders and certain interlocutory and collateral orders.” *United States v. Doe*, 962 F.3d 139, 143 (4th Cir. 2020). “Piecemeal or interlocutory appeals are disfavored in the federal courts, especially in criminal cases.” *United States v. Lawrence*, 201 F.3d 536, 537 (4th Cir. 2000).

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<sup>1</sup> The magistrate judge found Tanner guilty of violating 38 C.F.R. § 1.218(b)(11) (2021). The district court determined that Tanner should have been convicted under 38 C.F.R. § 1.218(a)(5) (2021). *See Harris v. U.S. Dep’t of Veterans Affs.*, 776 F.3d 907, 912 n.3 (D.C. Cir. 2015).

Tanner seeks to appeal the district court’s order affirming his conviction and remanding to the magistrate judge for sentencing. But that order is not a “final decision[]” under 28 U.S.C. § 1291 because “[i]n criminal proceedings, sentencing is the final decision, before which litigation has not ended.” *United States v. Baxter*, 19 F.3d 155, 156 (4th Cir. 1994). Nor is the district court’s order an immediately appealable interlocutory or collateral order. *See* 28 U.S.C. § 1292; *United States v. Sueiro*, 946 F.3d 637, 639-40 (4th Cir.), *cert. denied*, 140 S. Ct. 2553 (2020). Moreover, the magistrate judge’s imposition of sentence and entry of the criminal judgment after Tanner appealed to this court does not authorize our exercise of jurisdiction because Tanner did not appeal the criminal judgment to the district court before seeking our review. *See* 18 U.S.C. § 3402; Fed. R. Crim. P. 58(g)(2)(B); *Baxter*, 19 F.3d at 156. The district court thus has not had an opportunity to enter a final decision that we may review under § 1291. *See United States v. Wasylyshyn*, 979 F.3d 165, 169 n.2 (2d Cir. 2020).

We therefore lack jurisdiction over this appeal and must dismiss it. We observe, however, that Tanner may still pursue his challenges to the magistrate judge’s criminal judgment in the district court.<sup>2</sup> He may then again appeal his conviction and sentence together to this court, if he finds it necessary. We also deny Tanner’s pending motion requesting an audio recording and a cease and desist order. We dispense with oral

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<sup>2</sup> Although Tanner filed his district court appeal before the magistrate judge sentenced him and entered the criminal judgment, Tanner’s district court appeal may be construed as a premature appeal that now authorizes the district court to consider the criminal judgment. *See United States v. Williams*, 81 F.3d 1321, 1327 (4th Cir. 1996).

argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*DISMISSED*