

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

STATE OF FLORIDA,

Appellant,

v.

MELVIN WOODARD,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D08-3666

Opinion filed August 28, 2009.

An appeal from the Circuit Court for Gadsden County.
Thomas H. Bateman, III, Judge.

Bill McCollum, Attorney General, and Giselle Denise Lyles, Assistant Attorney
General, Tallahassee, for Appellant.

Laura Anstead, Tallahassee, for Appellee.

PER CURIAM.

The State sought review of a pretrial oral ruling of the trial court regarding the admissibility of witness testimony. The Court lacks jurisdiction to review this order. See Owens v. State, 579 So. 2d 311 (Fla. 1st DCA 1991) (appellate court is without jurisdiction to entertain an appeal from an oral order). Recognizing this

lack of jurisdiction, the appellant filed a notice of voluntary dismissal pursuant to Florida Rule of Appellate Procedure 9.350(b). This rule provides that an appeal may be dismissed “provided that dismissal shall not be effective until 10 days after filing the notice of appeal or until 10 days after the time prescribed by rule 9.110(b), whichever is later.” A voluntary dismissal in this case would be ineffective because there is no written order from which to measure the date of rendition. Therefore, the time prescribed by rule 9.110(b) has not begun to run. Nevertheless, this appeal must be dismissed for lack of jurisdiction. Accordingly, the appellant’s notice of voluntary dismissal is treated as a response to this Court’s jurisdictional show cause order dated July 2, 2009. See Fla. R. App. P. 9.040(c). The appeal is hereby DISMISSED.

WOLF, KAHN, and VAN NORTWICK, JJ., CONCUR.