

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

RUBY ANGELINE STEPHENS,)	
)	
Appellant,)	
)	
v.)	Case No. 2D18-810
)	
STATE OF FLORIDA,)	
)	
Appellee.)	
_____)	

Opinion filed April 1, 2020.

Appeal from the Circuit Court for Polk
County; James M. Colaw, Judge.

Howard L. Dimmig, II, Public Defender,
and Matthew J. Salvia, Assistant Public
Defender, Bartow, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Linsey Sims-
Bohnenstiehl, Assistant Attorney General,
Tampa, for Appellee.

CASANUEVA, Judge.

Ruby Angeline Stephens appeals her judgments and sentences for first-degree murder, aggravated child abuse, and aggravated manslaughter of a child. An indictment was filed against Ms. Stephens in Polk County alleging that the above

offenses occurred in several counties, including Polk County and Alachua County. Ms. Stephens filed a notice that she elected the Eighth Judicial Circuit Court, Alachua County, as the venue for her case. Based on Ms. Stephens' notice, the Polk County Circuit Court entered an order transferring venue to the Eighth Judicial Circuit Court, Alachua County, noting that the case would be assigned to Judge James M. Colaw, a presiding Circuit Judge for Alachua County. Ms. Stephens thereafter entered a plea and was sentenced in Alachua County. She then filed her notice of appeal in Polk County. However, because there is no order in the record transferring the case from Alachua County back to Polk County, venue remained in Alachua County when Ms. Stephens filed her notice of appeal. We therefore transfer this appeal to the First District Court of Appeal.

In Stephens v. State, 279 So. 3d 835, 836 (Fla. 2d DCA 2019), this court transferred jurisdiction of the direct appeal to the First District Court of Appeal, because the defendant, Roy Allen Stephens, had transferred venue below from Polk County to Hamilton County. Mr. Stephens is the husband of Ms. Stephens, and the charges for both husband and wife arise from the death of the same victim. Similar to the present case, in Stephens, this court noted that the Polk County docket did not indicate that an order was entered transferring venue back to Polk County after the jury trial and sentencing in Hamilton County. Id. This court held:

[O]nce an order transferring venue has been entered by the transferor court and the court file has been received by the clerk of the transferee court, appellate jurisdiction becomes vested in the district court with jurisdiction over the transferee court for all subsequent matters in the case. This rule applies both to an initial transfer of venue and to any subsequent transfer back to the court of original jurisdiction.

Id. (quoting Hernandez v. State, 64 So. 3d 1175, 1180 (Fla. 2011)).

The State notes that after Ms. Stephens' judgment and sentence were entered, Judge Colaw entered an order directing the Alachua County jail to transport Ms. Stephens to the Polk County jail and that the Clerk of Alachua County sent certified copies of Ms. Stephens' original judgment and sentence, fingerprints, "[o]rder monetary sums," scoresheet, and two felony plea forms to the Clerk of Polk County. However, neither one of these two occurrences is equivalent to an order of the circuit judge transferring venue in the case.

In her reply brief, Ms. Stephens argues that this court has jurisdiction because here, unlike Mr. Stephens' case, the Polk County docket does not contain a "receipt of file received" in Alachua County and there was no Alachua County case number assigned. While she notes that Judge Colaw stated at a hearing that he had reviewed documents contained in the court file, she argues that this statement is ambiguous as to exactly what was sent to Alachua County or received there.

We first note that Ms. Stephens has waived any objection to whether venue was properly in Alachua County as a result of the procedures used by the Polk and Alachua County clerks. See Mathis v. State, 419 So. 2d 774, 775 (Fla. 1st DCA 1982) ("Any objection Mathis might have had to venue in Leon County was waived by his plea of guilty."). Further, in Waterfield v. State, 35 So. 3d 60, 61 (Fla. 2d DCA 2010), this court held that it was improper for the Charlotte County court to transfer a postconviction motion to Indian River County based on a similar argument. There, the case was originally transferred from Indian River County to Charlotte County, where the appellant was convicted of manslaughter and sentenced to fifteen years in prison. The

Charlotte County court transferred the motion to Indian River County, reasoning that its own jurisdiction was merely temporary because all of the appellant's records and files had been sent back to Indian River County. Id. The appellant also argued that Charlotte County had never acquired jurisdiction over the case because the transfer of his records to that county was incomplete or improper. This court did not find merit in this argument and held that "when venue has been transferred for trial and imposition of a sentence, the transferee court remains the court in which collateral postconviction matters are to be heard." Id.

The First District Court of Appeal, having jurisdiction over appeals from Alachua County, has jurisdiction over the present appeal. Therefore, the Second District Court of Appeal lacks jurisdiction, and this appeal is hereby transferred to the First District Court of Appeal.

KHOUZAM, C.J., and VILLANTI, J., Concur.