

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-000727-MR

TRACEY CASSETTY

APPELLANT

v. APPEAL FROM LOGAN CIRCUIT COURT  
HONORABLE TYLER L. GILL, JUDGE  
ACTION NO. 11-CR-00075

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
DISMISSING APPEAL

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BEFORE: CLAYTON, COMBS, AND STUMBO, JUDGES.

CLAYTON, JUDGE: Tracey Cassetty appeals from a Logan Circuit Court order denying his motion to recuse. Cassetty argues that the trial judge who revoked his pretrial diversion should have recused himself because he also presided over the drug court proceedings that were the basis of the revocation. Because this appeal was filed from an interlocutory order, it must be dismissed.

Cassetty was charged with theft by unlawful taking over \$500. Under the terms of an agreement with the Commonwealth, he entered a guilty plea to the charge, and the Commonwealth recommended a sentence of five years, to be diverted for five years. The trial court placed Cassetty on pretrial diversion in accordance with the agreement, and also entered an order of referral to the Logan County Drug Court, stating that completion of drug court was a condition of Cassetty's pretrial diversion. The same trial judge subsequently presided over Cassetty's drug court proceedings.

About eighteen months later, the trial court entered a *sua sponte* order moving to revoke Cassetty's diversion because he had been terminated from drug court. The Commonwealth immediately joined in the motion. Cassetty filed a motion to recuse, alleging that the trial judge's participation in drug court would prevent him from being an impartial jurist in the revocation proceedings. The trial court denied the motion in an order entered on March 6, 2013.

A diversion revocation hearing was held on March 7, 2013, and the trial court thereafter voided the pretrial diversion agreement. On April 16, 2013, the trial court entered a final judgment, sentencing Cassetty to five years in prison, stating that he would consider granting shock probation into a long-term, inpatient rehabilitation program. This appeal followed.

The Introduction to Appellant's brief states that Cassetty is appealing from the order revoking his pretrial diversion, entering a judgment against him for theft and sentencing him to five years in prison. His notice of appeal, however,

states only that he is appealing from the order denying the motion to recuse. Kentucky Rules of Criminal Procedure (RCr) 12.04 (2) requires the notice of appeal to “designate the judgment from which the appeal is being taken.” The circuit court record shows that the notice of appeal was received on March 13, 2013, with a notation by the clerk that there was no accompanying motion to proceed or money tendered with the notice. The record further shows that the notice of appeal was actually entered on April 22, 2013.

“A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02.” Kentucky Rules of Civil Procedure (CR) 54.01. The March 6, 2013 order denying the recusal motion did not adjudicate all the rights of the parties because it did not resolve the diversion revocation question. “Pursuant to KRS [Kentucky Revised Statutes] 533.250, pre-trial diversion essentially delays the final adjudication of a criminal complaint against a defendant. . . . It follows that if the case has not been finally adjudicated at the diversion stage, there must be a proceeding to achieve finality.” *Peeler v. Commonwealth*, 275 S.W.3d 223, 225-26 (Ky. App. 2008). Such a final adjudication had not occurred when the trial court entered the order denying the motion to recuse; at that point, the trial court could have decided not to impose sentence and to allow Cassetty to remain on pretrial diversion.

The March 6, 2013 order does state that it is a “final and appealable order,” but does not contain the mandatory recital that there is “no just reason for

delay,” as required by CR 54.02(1). We can find no authority that permits an immediate appeal from an interlocutory order denying a motion to recuse.

In “criminal cases,” the Commonwealth can appeal from an interlocutory “adverse decision or ruling” by the circuit court under certain conditions and in the manner provided for by court rules. KRS 22A.020(4). . . . Simply stated “there is no comparable provision for an [interlocutory] appeal by the [criminal] defendant.” *Evans v. Commonwealth*, 645 S.W.2d 346–47 (Ky. 1982).

*Commonwealth v. Farmer*, 423 S.W.3d 690, 693-94 (Ky. 2014).

Therefore, this appeal must be dismissed.

ALL CONCUR.

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