

STATE OF LOUISIANA

NO. 17-KA-507

VERSUS

FIFTH CIRCUIT

JONATHAN M. LOPEZ

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 17-1894, DIVISION "B"
HONORABLE CORNELIUS E. REGAN, JUDGE PRESIDING

March 28, 2018

**MARION F. EDWARDS, JUDGE PRO TEMPORE
JUDGE**

Panel composed of Judges Stephen J. Windhorst,
Hans J. Liljeberg, and Marion F. Edwards, Judge Pro Tempore

APPEAL DISMISSED

MFE

SJW

HJL

COUNSEL FOR PLAINTIFF/APPELLANT,
STATE OF LOUISIANA

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EDWARDS, JUDGE PRO TEMPORE, J.

Appellant, the State of Louisiana, appeals a trial court's ruling that granted defendant's motion to quash the bill of information. For the reasons that follow, the State's appeal is dismissed, and we reserve the State's right to file an application for supervisory writs.

STATEMENT OF THE CASE

On March 27, 2017, the Jefferson Parish District Attorney's Office filed a bill of information charging defendant, Jonathan Lopez, with possession of marijuana, third offense, in violation of La. R.S. 40:966(C). Defendant pled not guilty at his arraignment on March 29, 2017. Thereafter, on May 12, 2017, defendant filed a motion to quash the bill of information, arguing that one of his prior convictions could not be used as a predicate conviction for enhancement purposes. The trial court granted defendant's motion following a hearing on May 30, 2017. The State timely sought the instant appeal.

ANALYSIS

Only a final judgment or ruling is appealable. La. C.Cr.P. art. 912(A). A final judgment is one which puts an end to the proceedings. *State v. Arceneaux*, 13-953 (La. App. 5 Cir. 04/23/14), 140 So.3d 304, 306. A motion to quash an indictment or any count thereof may be appealed by the State. La. C.Cr.P. art. 912(B)(1). When read and interpreted in reference to subsection A, a ruling on a motion to quash must be a final judgment that puts an end to the proceedings in order to be appealable. *Arceneaux*, 140 So.3d at 306. The quashing of a predicate offense does not put an end to the proceedings and, instead simply reduces the grade of the offense. *State v. Millette*, 14-76 (La. App. 5 Cir. 10/29/14), 164 So.3d 865.

In this case, the trial court's quashing of the 2009 predicate only reduced the grade of the offense from a possession of marijuana, third offense to a possession of marijuana, second offense. Therefore, it is not a final, appealable judgment. The State's proper avenue to seek review is by an application for a writ of review under our supervisory jurisdiction. *Arceneaux, supra; Millette, supra.*

DECREE

Accordingly, we dismiss the present appeal. We reserve to the State the right to file a proper application for supervisory writs, in compliance with U.R.C.A. Rule 4-3, within fifteen days from the date of this decision. Further, we construe the motion for appeal as a notice of intent to seek a supervisory writ so the State is not required to file a notice of intent nor obtain an order setting a return date pursuant to U.R.C.A. Rule 4-3. *State v. Donaldson*, 13-703 (La. App. 5 Cir. 11/19/13), 130 So.3d 394.

APPEAL DISMISSED

SUSAN M. CHEHARDY
CHIEF JUDGE

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MARC E. JOHNSON
ROBERT A. CHAISSON
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MARCH 28, 2018** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

17-KA-507

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE CORNELIUS E. REGAN (DISTRICT JUDGE)
TERRY M. BOUDREAUX (APPELLANT) R. STEVEN LEMOINE (APPELLEE)

MAILED

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