IN THE UTAH COURT OF APPEALS

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State of Utah,   )   MEMORANDUM DECISION
)   (Not For Official Publication)
      Plaintiff and Appellee,   )
)   Case No. 20060669-CA
v.   )
)   F I L E D
)   (October 13, 2006)
Charly Bo Daniels,   )
)   ┌─────────────────────┐
      Defendant and Appellant.   )   │ 2006 UT App 424   │
                                        └─────────────────────┘

Second District, Ogden Department, 061902059
The Honorable Parley R. Baldwin

Attorneys: Kent E. Snider, Ogden, for Appellant
            Mark L. Shurtleff and Kris C. Leonard, Salt Lake
            City, for Appellee

Before Judges Billings, McHugh, and Orme.

PER CURIAM:

    Charly Bo Daniels appeals his conviction and sentence. This
case is before the court on a sua sponte motion for summary
disposition for lack of jurisdiction.

    Daniels filed his notice of appeal in this matter on July
10, 2006. He had not been convicted or sentenced at that time.
On July 27, Daniels ultimately pleaded guilty to burglary, a
third degree felony. See Utah Code Ann. § 76-6-202 (2003). No
sentence was imposed at that time. Instead, sentencing was
calendared for a subsequent date, and it was later rescheduled
for October 5.

    Generally, an appeal may be taken only from a final
judgment. See Utah R. App. P. 3(a). "In a criminal case, it is
'the sentence itself which constitutes a final judgment from
which the appellant has the right to appeal.'" State v. Bower,
2002 UT 100,¶4, 57 P.3d 1065 (quoting State v. Gerrard, 584 P.2d
885, 886 (Utah 1978)); see also State v. Walker, 2002 UT App
290,¶11, 55 P.3d 1165 (holding that "under Utah law a trial court
must impose a sentence in order to create a final, appealable
order").

Because Daniels had not been sentenced at the time he filed his notice of appeal, there was no final appealable order in place. In the absence of a final order, this court lacks jurisdiction and must dismiss the appeal. See <u>Loffredo v. Holt</u>, 2001 UT 97,¶11, 37 P.3d 1070.

This appeal is dismissed, without prejudice to the filing of a timely appeal after a final judgment has been entered.

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Judith M. Billings, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge