IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Duke G. Duccini, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060765-CA F I L E D (October 5, 2006) 2006 UT App 407

First District, Brigham City Department, 031100223
The Honorable Ben H. Hadfield

Attorneys: Duke G. Duccini, Draper, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake City, for Appellee

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Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Appellant Duke G. Duccini appeals the denial of a motion to withdraw his guilty plea entered in November 2003, which was the basis for a December 2003 conviction. After we initiated a sua sponte motion for summary disposition, Duccini filed a suggestion for certification to the Utah Supreme Court. Because we lack jurisdiction to consider the appeal, we dismiss the appeal and take no action on the suggestion for certification.

The district court announced its decision in a signed memorandum decision, denying the motion to withdraw the guilty plea as both untimely and without merit. The court directed the State "to prepare an order in conformance herewith." Duccini filed a notice of appeal from the memorandum decision. The district court record does not contain an order prepared by the State and entered by the court, as contemplated by the memorandum decision.

The State correctly argues that the memorandum decision is not a final appealable order under State v. Leatherby, 2003 UT 2, 65 P.3d 1180. In Leatherby, the Utah Supreme Court stated:

> Although Leatherby is correct that a signed minute entry may constitute a final appealable order, he is incorrect that the minute entry in this case was such an order. A signed minute entry will not be considered a final order where its language indicates that it is not intended as final. Thus, where further action is contemplated by the express language of the order, it cannot be a final determination susceptible of enforcement.

Id. at ¶9 (citations omitted).

Duccini filed his notice of appeal prematurely after entry of the memorandum decision, but before entry of the final order that the State was directed to prepare by the express language of the memorandum decision. Because the memorandum decision expressly directed the preparation of a further order, that decision was not final and appealable.

Without a final appealable order, we lack jurisdiction to consider the merits of the appeal and must dismiss it. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989) ("When a matter is outside the court's jurisdiction, it retains only the authority to dismiss the action."). Accordingly, we dismiss the appeal for lack of jurisdiction, without prejudice to a timely appeal initiated after entry of a final appealable order.

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Judith M. Billings, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge