IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Troy Munk Sommerville, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20080397-CA F I L E D (July 3, 2008) 2008 UT App 258

Third District, Salt Lake Department, 071902557
The Honorable Paul G. Maughan

Attorneys: Charles A. Schultz, Brigham City, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake City, for Appellee

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Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Troy Munk Sommerville seeks to appeal the trial court's denial of his motion to dismiss the charges against him. This is before the court on its own motion for summary disposition based on lack of jurisdiction due to the absence of a final order.

Generally, appeals may be taken only from final orders or judgments. See Utah R. App. P. 3(a). In a criminal case, it is the sentence that is the final order from which an appeal of right may be taken. See State v. Bowers, 2002 UT 100, ¶ 4, 57 P.3d 1065. Where an appeal is not properly taken, this court lacks jurisdiction and must dismiss the appeal. See Bradbury v. Valencia, 2000 UT 50, ¶ 8, 5 P.3d 649. An appeal from a nonfinal order is improper unless it fits within an exception to the final judgment rule. See id. ¶ 9.

The order here is not a final order but, rather, an interlocutory order denying a motion to dismiss and moving the case forward. Sommerville has not shown that the order fits within any exception to the final judgment rule. He did not file a petition for permission to appeal an interlocutory order pursuant to rule 5 of the Utah Rules of Appellate Procedure, one method of obtaining review of a nonfinal order. See Utah R. App. P. 5. Furthermore, even if Sommerville had shown that the civil rule applies in this criminal proceeding or that this order would be eligible for certification, the order is not certified as

final for the purposes of appeal under rule 54(b) of the Utah Rules of Civil Procedure.

Sommerville asserts that the trial court certified the order as final, but his assertion is incorrect. The trial court noted in its April 7, 2008 order that its November 2007 order and minute entry "constitute[d] the final order on this matter." This statement simply means that the trial court had already entered orders on the motion to dismiss, explaining why it declined to enter yet another order as proposed by Sommerville. The statement does not "certify" the order as final for the purposes of appeal. See Utah R. Civ. P. 54(b) (requiring an express determination by the trial court that there is no just reason for delay and an express direction for entry of judgment to make an order final for appeal purposes).

Sommerville also argues that the parties and trial court have consented to the appeal of this order, so the court should hear the appeal. The asserted consent is not supported by the record, and further, the acquiescence of the parties is insufficient to confer jurisdiction on this court. See Bradbury, 2000 UT 50, ¶ 8. Finally, Sommerville asserts that this court should consider the matter as a petition for extraordinary relief if no appellate jurisdiction is established. However, extraordinary relief is available only where no other plain, speedy, or adequate remedy exists. See Utah R. App. P. 19. Sommerville has a right to direct appeal after the entry of a final order in this case and, therefore, he has an adequate remedy.

In sum, the order appealed is not a final order and is not within any exception to the final order rule. As a result, this court lacks jurisdiction over the appeal and must dismiss it. See Bradbury, 2000 UT 50, ¶ 8.

Accordingly, this appeal is dismissed without prejudice to the filing of a timely notice of appeal after the entry of a final order.

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Russell W. Bench, Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge