

STATE OF LOUISIANA

NO. 14-KA-76

VERSUS

FIFTH CIRCUIT

ROBERT CHARLES MILLETTE

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 12-5536, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

OCTOBER 29, 2014

COURT OF APPEAL
FIFTH CIRCUIT

FILED OCT 29 2014

STEPHEN J. WINDHORST
JUDGE

 CLERK
Cheryl Quirk Landrieu

Panel composed of Judges Robert A. Chaisson,
Robert M. Murphy and Stephen J. Windhorst

PAUL D. CONNICK, JR.
DISTRICT ATTORNEY
Twenty-Fourth Judicial District
Parish of Jefferson
TERRY M. BOUDREAUX
THOMAS J. BUTLER
SHWANNAH MCCARTHY
ASSISTANT DISTRICT ATTORNEYS
200 Derbigny Street
Gretna, Louisiana 70053
COUNSEL FOR PLAINTIFF/APPELLANT

ROBERT M. LOUQUE, JR.
ATTORNEY AT LAW
700 Camp Street
Suite 212
New Orleans, Louisiana 70130
COUNSEL FOR DEFENDANT/APPELLEE

APPEAL DISMISSED

18m
ZAC
RMM

The State has appealed the trial court's granting of defendant's motion to quash defendant's first predicate conviction in the bill of information charging defendant with third offense DWI, La. R.S. 14:98(A) (D). We dismiss this appeal for lack of jurisdiction.

Under La. C.Cr.P. art. 912A, "[O]nly a final judgment or ruling is appealable." A final judgment is one which puts an end to the proceedings. State v. Quinones, 94-436 (La. App. 5 Cir. 11/29/94), 646 So.2d 1216, 1217. Article 912B(1) further provides that the State may appeal "[a] motion to quash an indictment or any count thereof." However, 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. State v. Arceneaux, 13-953 (La. App. 5 Cir. 4/23/14), (unpublished).

In this case, we find that the trial court's quashing of one of the predicates does not put an end to the proceedings and, instead simply reduces the grade of the offense from a third offense DWI to a second offense DWI by eliminating the use of that particular conviction. Thus, it is not a final, appealable judgment, and therefore the State's proper avenue to seek review is by an application for writ of review. Arceneaux, supra. See State v. Myles, 04-677 (La. App. 5 Cir. 1/25/05), 894 So.2d 515.

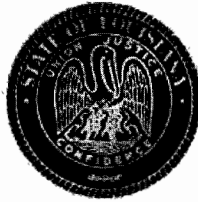
Accordingly, we dismiss the present appeal. We reserve to the State the right to file a proper application for supervisory writs, in compliance with U.R.C.A. Rule 4-3, within fifteen days from the date of this decision. Further, we construe the motion for appeal as a notice of intent to seek a supervisory 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

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CHERYL Q. LANDRIEU
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

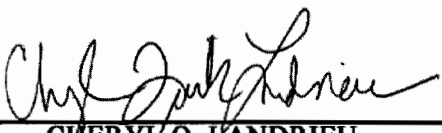
SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

**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 2-20** THIS DAY **OCTOBER 29, 2014** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:


CHERYL Q. LANDRIEU
CLERK OF COURT

14-KA-76

E-NOTIFIED

TERRY M. BOUDREAUX
THOMAS J. BUTLER

MAILED

ROBERT M. LOUQUE, JR.
ATTORNEY AT LAW
700 CAMP STREET
SUITE 212
NEW ORLEANS, LA 70130

HON. PAUL D. CONNICK, JR.
DISTRICT ATTORNEY
SHWANNAH MCCARTHY
ASSISTANT DISTRICT ATTORNEY
TWENTY-FOURTH JUDICIAL DISTRICT
200 DERBIGNY STREET
GRETNA, LA 70053