

STATE OF LOUISIANA  
VERSUS  
MICHAEL P. HIDALGO

NO. 19-KA-612  
FIFTH CIRCUIT  
COURT OF APPEAL  
STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 18-1539, DIVISION "L"  
HONORABLE DONALD A. ROWAN, JR., JUDGE PRESIDING

January 22, 2020

**ROBERT A. CHAISSON**  
**JUDGE**

Panel composed of Judges Susan M. Chehardy,  
Marc E. Johnson, and Robert A. Chaisson

**APPEAL DISMISSED**

**RAC**  
**SMC**  
**MEJ**

**CHAISSON, J.**

Defendant, Michael Hidalgo, appeals his conviction for first offense domestic abuse battery, in violation of La. R.S. 14:35.3. For the reasons that follow, we dismiss defendant's appeal for lack of jurisdiction.

Appellate jurisdiction extends only to cases that are triable by a jury. La. Const. Art. 5, § 10; La. C.Cr.P. art. 912.1. To be eligible for trial by jury in a misdemeanor case, an accused must be faced with imprisonment for more than six months and/or a fine of more than one thousand dollars. La. C.Cr.P. art. 779; *State v. Hunter*, 15-69 (La. App. 5 Cir. 2/11/15), 168 So.3d 773, 774.

In the present case, after a bench trial on March 18, 2019, the trial judge found defendant guilty of first offense domestic abuse battery. The penalty provision for that offense is contained in La. R.S. 14:35.3(C), which provides, in pertinent part, as follows:

On a first conviction, notwithstanding any other provision of law to the contrary, the offender shall be fined not less than three hundred dollars nor more than one thousand dollars and shall be imprisoned for not less than thirty days nor more than six months. At least forty-eight hours of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

Since defendant's offense is a misdemeanor offense not eligible for trial by jury<sup>1</sup>, his conviction is not an appealable judgment. Under La. C.Cr.P. art. 912.1(C)(1), an application for a writ of review is the proper mechanism for seeking judicial review of a conviction on an offense not triable by a jury. *See State v. Cotton*, 14-419 (La. App. 5 Cir. 6/24/14), 145 So.3d 533, 536.

Accordingly, we dismiss the present appeal. We reserve, however, defendant's right to file a proper application of supervisory writs, in compliance with U.R.C.A. Rule 4-1 *et seq.*, within thirty days from the date of this opinion.

---

<sup>1</sup> It is noted that defendant was sentenced to three and one-half months in the Jefferson Parish Correctional Center, with the first forty-eight hours to be served without benefit of parole, probation, or suspension of sentence. Defendant was also ordered to pay a fine of five hundred dollars.

Further, we hereby construe defendant's motion for appeal as a notice of intent to seek a supervisory writ, so defendant 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.

**APPEAL DISMISSED**

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
STEPHEN J. WINDHORST  
HANS J. LILJEBERG  
JOHN J. MOLAISON, JR.

JUDGES



FIFTH CIRCUIT

101 DERBIGNY STREET (70053)

POST OFFICE BOX 489

GRETNA, LOUISIANA 70054

[www.fifthcircuit.org](http://www.fifthcircuit.org)

CURTIS B. PURSELL  
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 2-16.4 AND 2-16.5** THIS DAY **JANUARY 22, 2020** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**19-KA-612**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)  
HONORABLE DONALD A. ROWAN, JR. (DISTRICT JUDGE)  
THOMAS J. BUTLER (APPELLEE)

**MAILED**

RICHARD H. BARKER, IV (APPELLANT)  
ATTORNEY AT LAW  
228 ST. CHARLES AVENUE  
SUITE 501  
NEW ORLEANS, LA 70130