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STATE OF NEBRASKA, APPELLANT, V. PATRICK J. COUPENS, APPELLEE.

825 N.W.2d 808

Filed January 15, 2013. No. A-12-857.

1. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it.
2. ____: ____. The question of jurisdiction is a question of law, which an appellate court resolves independently of the trial court.
3. **Criminal Law: Judgments: Appeal and Error.** In the absence of specific statutory authorization, the State, as a general rule, has no right to appeal an adverse ruling in a criminal case.
4. **Prosecuting Attorneys: Judgments: Jurisdiction: Appeal and Error.** Strict compliance with Neb. Rev. Stat. § 29-2315.01 (Reissue 2008) is required to confer jurisdiction.
5. **Prosecuting Attorneys: Judgments: Appeal and Error.** Neb. Rev. Stat. § 29-2315.01 (Reissue 2008) does not permit an appeal by the State from any interlocutory ruling of the trial court in a criminal proceeding.
6. **Criminal Law: Final Orders.** An order entered during the pendency of a criminal cause is final only when no further action is required to completely dispose of the cause pending.

Appeal from the District Court for Box Butte County: TRAVIS P. O'GORMAN, Judge. Appeal dismissed.

K.J. Hutchinson, Box Butte County Attorney, for appellant.

No appearance for appellee.

IRWIN, SIEVERS, and PIRTLE, Judges.

PIRTLE, Judge.

INTRODUCTION

The State of Nebraska brought this error proceeding pursuant to Neb. Rev. Stat. § 29-2315.01 (Reissue 2008), seeking review of an order of the district court granting a motion to discharge count II of the two-count information filed against the defendant, Patrick J. Coupens. Count I remains pending in the district court. We conclude that this court lacks jurisdiction to hear the State's appeal, and accordingly, we dismiss the appeal.

STATEMENT OF FACTS

The State's application for leave to docket an appeal in this court provides the following procedural history. A complaint charging Coupens with misdemeanor domestic assault was filed in county court on August 22, 2011. A felony charge of strangulation was filed on November 17. Following a preliminary hearing, the felony charge was bound over to the district court. The county court dismissed without prejudice the assault charge, after which the State filed the strangulation charge along with the assault charge in district court. Thereafter, Coupens filed a motion for discharge as to the assault charge on the ground that his right to a speedy trial was violated. On August 30, 2012, the district court granted the motion and dismissed count II of the information. The court stated that trial would proceed on count I. The State subsequently perfected an error proceeding to this court, asserting that the district court erred in granting Coupens' motion for discharge as to count II.

STANDARD OF REVIEW

[1,2] Before reaching the legal issues presented for review, it is the duty of an appellate court to determine whether it has jurisdiction over the matter before it. *State v. Penado*, 282 Neb. 495, 804 N.W.2d 160 (2011). The question of jurisdiction is a question of law, which an appellate court resolves independently of the trial court. *Id.*

ANALYSIS

[3,4] In the absence of specific statutory authorization, the State, as a general rule, has no right to appeal an adverse ruling in a criminal case. *State v. Penado, supra*. Section 29-2315.01 grants the State the right to seek appellate review of adverse criminal rulings and specifies the special procedure by which to obtain such review. *State v. Penado, supra*. The Nebraska Supreme Court has consistently maintained that strict compliance with § 29-2315.01 is required to confer jurisdiction. *State v. Penado, supra*. See, e.g., *State v. Hall*, 252 Neb. 885, 566 N.W.2d 121 (1997); *State v. Wieczorek*, 252 Neb. 705, 565 N.W.2d 481 (1997). Section 29-2315.01 provides in relevant part:

> The prosecuting attorney may take exception to any ruling or decision of the court made during the prosecution of a cause by presenting to the trial court the application for leave to docket an appeal with reference to the rulings or decisions of which complaint is made. Such application shall contain a copy of the ruling or decision complained of, the basis and reasons for objection thereto, and a statement by the prosecuting attorney as to the part of the record he or she proposes to present to the appellate court. Such application shall be presented to the trial court within twenty days *after the final order is entered in the cause*, and upon presentation, if the trial court finds it is in conformity with the truth, the judge of the trial court shall sign the same and shall further indicate thereon whether in his or her opinion the part of the record which the prosecuting attorney proposes to present to the appellate court is adequate for a proper consideration of the matter. The prosecuting attorney shall then present such application to the appellate court within thirty days *from the date of the final order*.

(Emphasis supplied.)

[5,6] Section 29-2315.01 does not permit an appeal by the State from any interlocutory ruling of the trial court in a criminal proceeding. *State v. Penado, supra*. This is consistent with the longstanding principle of avoiding piecemeal appeals arising out of one set of operative facts. *Id*. See *State v. Wieczorek, supra*, in which the Nebraska Supreme Court held that because the State filed its application for review of the dismissal of three counts of a four-count information before the defendant had been sentenced on the one count for which he was convicted, the application was filed before entry of a final order and was, therefore, untimely and insufficient to confer appellate jurisdiction. The court held that "an order entered during the pendency of a criminal cause is final only when no further action is required to completely dispose of the cause pending." *Id*. at 710, 565 N.W.2d at 484.

In the instant case, the State filed its application for leave to docket an appeal before Coupens had been tried and sentenced on the remaining count pending before the district court. The

order granting the motion to discharge count II did not completely dispose of the action and does not constitute a final order under § 29-2315.01. This court therefore lacks jurisdiction to hear the State's appeal.

CONCLUSION

Because the State did not appeal from a final order as required by § 29-2315.01, this court lacks jurisdiction over the appeal and the appeal must be dismissed.

APPEAL DISMISSED.

SUSAN JURGENS, APPELLEE, V. IRWIN INDUSTRIAL TOOL COMPANY, FORMERLY KNOWN AS AMERICAN TOOL CO., INC., APPELLANT, AND STATE OF NEBRASKA, WORKERS' COMPENSATION TRUST FUND, APPELLEE.

825 N.W.2d 820

Filed January 22, 2013. No. A-12-184.

1. **Workers' Compensation: Appeal and Error.** Neb. Rev. Stat. § 48-185 (Cum. Supp. 2012) provides that on an appeal of an award by the Nebraska Workers' Compensation Court, the award made by the compensation court shall have the same force and effect as a jury verdict in a civil case.
2. ____: ____. A judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award.
3. **Workers' Compensation: Proof.** Neb. Rev. Stat. § 48-141 (Reissue 2010) provides that a party may apply for a modified award on the ground of increase or decrease of incapacity due solely to the injury. This is a two-part test. The moving party must prove (1) a change in incapacity and (2) that the change is due solely to the original work-related injury.
4. ____: ____. To establish a change in incapacity under Neb. Rev. Stat. § 48-141 (Reissue 2010), an applicant must show a change in impairment and a change in disability.
5. **Workers' Compensation: Words and Phrases.** In a workers' compensation context, impairment refers to a medical assessment whereas disability relates to employability.
6. **Workers' Compensation.** There is no requirement that an employee reach maximum medical improvement prior to modification of a workers' compensation award.