

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs September 12, 2023

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STATE OF TENNESSEE v. TYRONE T. ROACH

**Appeal from the Circuit Court for Humphreys County
No. 13526 David D. Wolfe, Judge**

No. M2022-01626-CCA-R3-CD

Defendant, Tyrone T. Roach, entered a nolo contendere plea to one count of sexual battery. The trial court imposed a diverted one-year sentence. As part of the plea, Defendant attempted to reserve a certified question of law under Tennessee Rule of Criminal Procedure 37(b)(2) as to whether the four-year delay between the grand jury presentment on the sexual battery charge and his arrest on the presentment violated his rights to a speedy trial and due process. The State contends that this court lacks jurisdiction to hear an appeal from a diverted sentence. In the alternative, the State argues that Defendant did not reserve the certified question properly, and even if the certified question were reserved, the trial court did not violate his right to a speedy trial. Defendant has not responded to the State's contention regarding jurisdiction. We conclude we lack jurisdiction to consider Defendant's appeal. Accordingly, we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

MATTHEW W. WILSON, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and KYLE A. HIXSON, JJ., joined.

John S. Colley, III, Columbia, Tennessee, for the appellant, Tyrone T. Roach.

Jonathan Skrmetti, Attorney General and Reporter; Jonathan S. Wardle, Senior Assistant Attorney General; W. Ray Crouch, Jr., District Attorney General; and Joseph L. Hornick, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Background

On December 4, 2017, the Humphreys County Grand Jury charged Defendant with sexual battery, a Class E felony, for an offense alleged to have occurred August 15, 2016. A *capias* was issued the day of the Grand Jury's return, but Defendant was not arrested until November 2021, when he was detained by the St. Tammany Parish, Louisiana, Sheriff's Office. Defendant waived extradition, and he was transferred to the Humphreys County Jail in Tennessee. Defendant then posted bond.

On April 19, 2022, counsel for Defendant filed a "Motion to Dismiss Indictment," alleging that the State's failure to both "serve [Defendant] with the *capias* until November 2021" and "bring this case to trial in the over four . . . years since the presentment issued" denied Defendant his rights to both a speedy trial and due process. The trial court held a hearing on the motion April 27, 2022.

At the hearing, Defendant testified he had lived at the same residential address in Hickman County for the past nine years, including during the allegations in this case, the time the presentment was returned, and the time of the motion hearing. Defendant claimed to have met with law enforcement "several months" after the August 2016 incident. He testified that the investigating detective "told me to write a letter of apology and he was going to present that to the lady who made the accusation, and he said that they'll take it from there." Defendant believed the investigation into the incident ended after he wrote this letter, but he did not contact the Humphreys County authorities to verify the case was over.

On November 7, 2021, Defendant and his brother were at their parents' home in Slidell, Louisiana, cleaning out the home after their parents' deaths. The brothers saw someone trying to break into the house, at which point they contacted the St. Tammany Parish Sheriff's Office. When the responding officers ran a check on Defendant's name and driver's license, they discovered the outstanding arrest warrant from Humphreys County. Defendant was then arrested and detained at the St. Tammany Parish Jail before being extradited to Humphreys County on November 13, 2021.

At the end of the hearing, the trial court made oral findings of fact and conclusions of law denying Defendant's motion to dismiss based on a speedy trial violation. The trial court issued a written order memorializing the ruling on October 31, 2022, six months after the hearing on the speedy trial motion and nearly three weeks after Defendant entered his *nolo contendere* plea.

II. Plea and Certified Question of Law

On October 11, 2022, the trial court held a hearing at which Defendant entered a nolo contendere plea, by agreement with the State, to one count of sexual battery, as charged in the presentment. At the plea hearing, the State gave the following factual basis for the plea:

At that time, there was a domestic altercation and the victim in this case was transported . . . after AMR Ambulance was dispatched. . . . [T]he victim in this case stated when AMR arrived, the paramedic treating her while she was [lying] on the floor asked her to remove her bra and panties, which she believed this to be a part of the necessary treatment. And she stated that he - - the State would show, lifted her dress above her breasts, exposing her from the shoulders down. And then he was touching her bare breasts and all her breasts, and she believed that to be inappropriate and that he appeared to be getting gratification f[rom] that.

And . . . she gave a written statement and some point later [Defendant] wrote a letter . . . stating he apologized for offending her, and that would be the State's proof, Your Honor.

The trial court placed Defendant on judicial diversion for one year and ordered him to register as a sex offender during the diversionary term. The trial court filed the order regarding diversion on October 19, 2022.

On the day of Defendant's plea hearing, the trial court entered an "Order Certifying Issues for Appeal" reserving the following question:

Did the November 2021 arrest of the Defendant (and his ensuing prosecution) on a December 2017 presentment (alleging an August 15, 2016 crime) violate [Defendant's] guarantees to a speedy trial under the [Sixth] Amendment to the United States Constitution and Article I, section 9 of the Constitution of the State of Tennessee?

(emphasis in original deleted). This appeal followed.

III. Analysis

Before addressing the merits of Defendant's stated issues, we must address the State's contention that this court lacks jurisdiction to consider an appeal from a grant of

judicial diversion, even when a defendant preserves a certified question of law. Defendant did not address the jurisdictional issue in his brief, nor did he file a reply brief addressing this issue. Based on our precedent, we agree with the State.

“In criminal actions an appeal as of right by a defendant lies from any *judgment of conviction*” when the defendant entered a guilty or nolo contendere plea “if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(A) or (D) of the Tennessee Rules of Criminal Procedure.” Tenn. R. App. P. 3(b)(2) (emphasis added). That said, Defendant entered his nolo contendere plea under the provisions of Tennessee Code Annotated section 40-35-313(a)(1)(A), in which a court defers further proceedings and places a qualified defendant on probation without entering a judgment of guilt. *See State v. Dycus*, 456 S.W.3d 918, 925 (Tenn. 2015). This court addressed a similar issue in *State v. Norris*, 47 S.W.3d 457 (Tenn. Crim. App. 2000). In *Norris*, a defendant entered a guilty plea, received judicial diversion, and attempted to reserve a certified question of law regarding the trial court’s denial of a suppression motion. *Id.* at 463. We concluded that the defendant, “[H]aving not been denied probation and not seeking to appeal the diversion order, and having received no conviction judgment, has no rightful appeal and, consequently, no basis for appealing a certified question of law.” *Id.* We also concluded that although an appeal improperly filed under Rule 3 may be considered as an application for extraordinary review under Rule 10 of the Tennessee Rules of Appellate Procedure,¹ the defendant did “not present a compelling case for the granting of a Rule 10 appeal.” *Id.*

This court, applying *Norris*, has continued to conclude that a defendant granted judicial diversion has no appeal available as of right from such an order. *See State v. Sullivan and Buckner, alias*, No. E2019-01471-CCA-R3-CD, 2021 WL 1086886, at *2 (Tenn. Crim. App. Mar. 22, 2021); *State v. Holcomb*, No. E2020-00332-CCA-R3-CD, 2021 WL 945098, at *3 (Tenn. Crim. App. Mar. 12, 2021); *State v. Begtrup*, No. M2019-02038-CCA-R3-CD, 2020 WL 7054516, at *5 (Tenn. Crim. App. Dec. 2, 2020); *State v. Watts*, No. M2016-02551-CCA-R3-CD, 2017 WL 3149641, at *1 (Tenn. Crim. App. July 25, 2017); *State v. Long*, No. M2016-01057-CCA-R3-CD, 2016 WL 385164, at *2-3 (Tenn. Crim. App. Feb. 2, 2016); *State v. Kuykendall*, No. E2011-01350-CCA-R3-CD, 2012 WL 3986318, at *3-4 (Tenn. Crim. App. Sept. 12, 2012). Accordingly, we must conclude that Defendant, who under his plea agreement had no judgments of conviction entered against him, has no appeal available to him as of right under Rule 3.

¹ Rule 10(a) of the Tennessee Rules of Appellate Procedure provides that an extraordinary appeal may be sought “(1) if the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review, or (2) if necessary for complete determination of the action on appeal as otherwise provided in these rules.”

As stated above, we “may treat an improperly filed Rule 3 appeal as a Rule 10 extraordinary appeal.” *Norris*, 47 S.W.3d at 463; *State v. Leath*, 977 S.W.2d 132, 135 (Tenn. Crim. App. 1998). In *Norris*, we declined to treat the appellant’s Rule 3 appeal as a Rule 10 application, stating, “Typically, the Rule 10 requirements for a discretionary appeal are not met when a trial court overrules a defendant’s motion to suppress evidence.” 47 S.W.3d at 463. Similarly, in this case the trial court’s conducting a hearing on Defendant’s motion to dismiss and overruling the motion after due consideration is not an act that “has so far departed from the accepted and usual course of judicial proceedings as to require immediate review.” Tenn. R. App. P. 10(a). And as we observed in *Sullivan*, if Defendant “successfully complete[s] his probationary period, no judgments of conviction will be entered. If his probation is revoked and his convictions subsequently reinstated, he will be entitled to a Rule 3 appeal at that time.” 2021 WL 1086886, at *2 (citing *Begtrup*, 2020 WL 7054516, at *5); see Tenn. Code Ann. § 40-35-313(a)(2) (“Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided.”). Accordingly, we decline to convert Defendant’s appeal into an appeal by permission under Rule 10.

IV. Conclusion

Because we find that no Rule 3 appeal lies in this case and that the case is not proper for Rule 10 extraordinary relief, the appeal is dismissed.

MATTHEW J. WILSON, JUDGE