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Filing ID 6818907  
Case Number 22-10002148



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MATTHEW JONES,

Def. ID# 2210002148

Appellant,

v.

STATE OF DELAWARE,

Appellee.

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Clerk's Office  
Delaware Supreme Court

ORDER DISMISSING APPEAL<sup>1</sup>

1) Pending in the Family Court of the State of Delaware is a criminal case against Matthew Jones ("appellant"): *State v. Jones*, Def. ID# 2210002148.

2) Appellant filed a motion to dismiss in that criminal case and a Family Court Commissioner denied the motion by order dated January 4, 2023.

3) Appellant has filed a *pro se*<sup>2</sup> appeal directly to Superior Court seeking review of the interim order of the Family Court Commissioner. He cites the following as authority for following that procedure: Family Court Civil Procedure Rules 53.1<sup>3</sup> and 73.1<sup>4</sup> as well as 10 *Del. C.*

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<sup>1</sup>It is undisputed that the Court lacks jurisdiction over this appeal. There is no reason to allow any party to comment on the jurisdictional issue. There also is no reason to permit the criminal proceedings to be delayed. Consequently, this Court *sua sponte* issues this order.

<sup>2</sup>The Office of Defense Services represents appellant.

<sup>3</sup>This civil rule provides:

Rule 53.1. Appeals from commissioners' orders.

(a) An interim or final order of a commissioner may be appealed to a judge of the Court by any party, except a party in default of appearance before such commissioner.

(b) An appeal of a commissioner's order shall be accomplished by filing with the Court within 30 days from the date of the commissioner's order written objections

to the commissioner's order which set forth with particularity the basis for each objection. A copy of the written objections shall be served on the other party, or the other party's attorney, if the other party is represented.

(c) The party filing written objections to a commissioner's order shall cause to be prepared a transcript of the proceeding before the commissioner, either in whole or in pertinent part, unless all parties agree to a statement of facts. The party filing objections shall file at the same time a notice to the Clerk of the Court that a transcript is to be prepared. The party filing objections will be informed by the Court of the cost of the transcript and will be required to pay such cost prior to the preparation of the transcript. The Court, upon request, may agree to accept an electronic recording of the proceedings, in lieu of a transcript, in cases where the objecting party is proceeding in forma pauperis.

(d) The other party shall have 20 days to file and serve a written response to the written objections. Once the period for filing a response has ended, the judge assigned to hear the appeal shall promptly decide the appeal, or if one is to be held, promptly schedule a hearing in the matter.

(e) From an appeal of a commissioner's final order, the Court shall make a de novo determination of the matter (that is, the matter shall be decided anew by a judge), based on the record below. Prior to determination of the matter, a party may request in writing that additional evidence be permitted to be offered. The Court shall only accept such additional evidence if it finds: 1) that it is newly discovered evidence which by due diligence could not have been discovered in time to offer it before issuance of the commissioner's order or 2) if the circumstances are such as would justify reopening the record in the interest of justice. If the Court determines that the additional evidence should be considered, it may remand the matter to the commissioner to hear additional evidence or the Court may hear and consider the additional evidence or the Court may conduct a de novo hearing.

(f) From an appeal of a commissioner's interim order, the Court may accept, reject or modify, in whole or in part, the commissioner's order or recommit the matter to the commissioner with instruction, where it is shown that the order is based upon findings of fact that are clearly erroneous, contrary to law or an abuse of discretion.

(g) A judge deciding an appeal from a commissioner's order may accept, reject or modify in whole or in part the commissioner's order. The judge may also recommit the matter to the commissioner with instruction.

(h) No appeal of a commissioner's order shall stay execution of the order unless such stay shall be specifically ordered by a judge of the Court.

(i) A party appealing an order of a commissioner who fails to comply with the provisions of this rule or with the direction of the Court as to the appeal shall be subject to dismissal of said appeal.

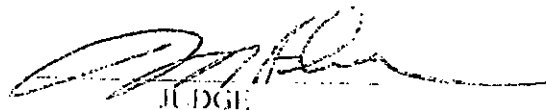
"This Rule provides:

is stated: "'Court' means the Family Court of the State of Delaware, and 'court' refers to other courts of the State." In Family Court Civil Procedural Rules, Rule 1(b), it is stated: "Definitions. For the purpose of these Rules, unless the context requires otherwise, any words used herein which are also defined in Title 10 of the Delaware Code shall have the same meaning." Again, the word "Court", as opposed to "court," means Family Court only.

5) The right to appeal a decision from the Family Court to Superior Court is extremely limited. There is the statutory right that 10 *Del. C.* § 1051(b) provides. That right limits an appeal to Superior Court from a final order of the Family Court. It does not authorize an appeal from an interim order of a Family Court Commissioner.

6) The Court has no jurisdiction over appellant's appeal and the appeal is DISMISSED.

IT IS SO ORDERED THIS 27 DAY OF JANUARY, 2023.

  
JUDGE

cc: Prothonotary's Office  
Family Court Clerk's Office  
Matthew Jones  
Richard Rettig, Esquire  
April Betts, Esquire

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"This statute states in pertinent part:

(b) From any order, ruling, decision or judgment of the Court in any criminal proceeding, there shall be the right of appeal in the first instance as provided by law to the Superior Court in the same county in which the case was adjudicated by the Court, with the further right of appeal as provided by law to the Supreme Court from an affirmance by the Superior Court of the order of the Court which was appealed, or from the entry of a judgment of conviction by the Superior Court upon a trial de novo on appeal to that Court.

(2) Jones has appealed to this Court. On March 9, 2023, he filed a letter stating that, rather than filing an opening brief, he would refer the Court to the motion to dismiss that he filed in the Family Court in December 2022. After careful

consideration, the appeal is dismissed, *sua sponte*, under Supreme Court Rule 29(c).<sup>1</sup>

“This is a court of limited jurisdiction under the Delaware constitution.”<sup>2</sup> The Court does not have jurisdiction—even permissive jurisdiction—to entertain any interlocutory appeal in a criminal case.<sup>3</sup> The criminal charges against Jones remain pending in the Family Court, and this criminal matter is therefore interlocutory. Jones’s improper filing of an appeal to the Superior Court from an order of a Family Court Commissioner does not confer jurisdiction on this Court in a criminal matter that is not final in the trial court.<sup>4</sup>

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<sup>1</sup> See DEL. SUPR. CT. R. 29(c) (permitting *sua sponte* dismissal, without notice, of an appeal that “manifestly fails on its face to invoke the jurisdiction of the Court and where the Court concludes, in the exercise of its discretion, that the giving of notice would serve no meaningful purpose”).

<sup>2</sup> *Gottlieb v. State*, 697 A.2d 400, 401 (Del. 1997).

<sup>3</sup> *Id.* at 401.

<sup>4</sup> See 10 Del. C. § 915(d) (providing that a Family Court Commissioner’s order may be appealed to a Family Court judge); *id.* § 1051(b) (providing that appeals from the Family Court in criminal proceedings are to the Superior Court in the first instance and that there is a further right of appeal to the Supreme Court “from an affirmance by the Superior Court of the order of the Court which was appealed, or from the entry of a judgment of conviction by the Superior Court upon a trial de novo on appeal to that Court”); *Jackson v. Jackson*, 2003 WL 22866415 (Del. Nov. 25, 2003) (“Jackson’s appeal to this Court, at this juncture, must be dismissed for lack of jurisdiction. An appeal in any Family Court criminal proceeding must be filed in the first instance with the Superior Court. In the event the Superior Court affirms the decision of the Family Court or enters a judgment of conviction upon a trial de novo, there is a further right of appeal to this Court.” (citation omitted)); *cf. also Hickey v. State*, 474 A.2d 118, 119 (Del. 1984) (dismissing appeal from a decision of the Superior Court ordering that another preliminary hearing be held in Family Court to determine if the defendant was to be bound over for trial in Superior Court, and stating: “Since the case is now a criminal cause, the appellate jurisdiction of this Court is governed by article IV, section 11(1)(b) of the Delaware Constitution; only a final judgment of conviction, resulting in a sentence of death, imprisonment for more than one month, or a fine greater than \$100 is appealable. . . . There being no final judgment in the case at this point that meets the jurisdictional requirements of article IV, section 11(1)(b), the Court concludes that the appeal must be dismissed for lack of subject matter jurisdiction.”).

NOW, THEREFORE, IT IS ORDERED that the appeal is DISMISSED. The motion to proceed *in forma pauperis* is moot.

BY THE COURT:

/s/ Gary F. Traynor  
Justice

**Proof of Service**

March 24, 2023

In accordance with 28 U.S. Code § 1746, I swear that within 3 mailing days, that I mailed a copy of this correspondence to all parties involved, listed beneath.

1. Elizabeth B. Prelogar, Solicitor General of the United States: Room 5614, Department of Justice, 950 Pennsylvania Avenue, North West, Washington, District of Columbia 20530-0001. (202) 514 - 2203
2. Sean P. Lugg, Chief of Appeals, Delaware Department of Justice: 820 North French Street, Wilmington, DE 19801. (302) 577 - 8500
3. Kathy Jennings, Delaware's Attorney General: Delaware Department of Justice, 13 The Circle, Georgetown, DE 19947. (302) 577 - 8400
4. Richard Rettig, II, Deputy Attorney General: Department of Justice, 13 The Circle, Georgetown, DE 19947. (302) 856 - 5353
5. April Betts, Public Defender: The Betts Law Firm, P.A., 31199 Beaver Circle, Lewes, DE 19958. (302) 856 - 5310

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12. Trooper Mark Williams, Troop 5 Delaware State Police: 9265 Public Safety Way, Bridgeville, DE 19933. (302) 337 - 1090
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