

Cite as 2017 Ark. App. 678

**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CR-17-391

JOSE SANTOS ROSALES-ALMENAR  
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered:** December 13, 2017

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. 04CR-14-925]

HONORABLE BRADLEY LEWIS  
KARREN, JUDGE

APPEAL DISMISSED

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**RITA W. GRUBER, Chief Judge**

The sole issue in this appeal is whether the Benton County Circuit Court had jurisdiction to reconsider its decision dismissing the charges against appellant Jose Santos Rosales-Almenar and then to set the case for a status hearing on his fitness for trial. The court did not have jurisdiction to reconsider its decision; consequently, we do not have jurisdiction, and we dismiss the appeal.

The relevant facts are that on July 9, 2014, appellant was charged with one count of felony second-degree sexual assault in violation of Ark. Code Ann. § 5-14-125(a)(3) (Repl. 2013). On December 16, 2014, appellant moved for evaluations to determine his fitness to proceed and his competence at the time of the alleged offense. *See* Ark. Code Ann. §§ 5-2-302 & 5-2-312(1)(A) (Supp. 2011). The court granted both motions and ordered the evaluations. In an order entered May 4, 2015, the court found appellant unfit to proceed, released him, and ordered him to report to the Arkansas State Hospital for restorative

services when notified by the hospital. The court ordered the hospital to report back within ten months regarding appellant's fitness to proceed and, if it found him unfit, to determine whether his mental defect rendered him incapable of restoration to fitness. At a fitness hearing conducted on July 13–14, 2016, the court found that appellant was not fit to proceed due to a “moderate intellectual disability,” that he was unlikely to be restored to fitness, and that he was not a danger to himself or others. The court then ordered that the case against appellant be dismissed. On July 18, 2016, the court entered an order finding that appellant was not fit to proceed and dismissing the case.

On August 15, 2016, the court entered an order setting a “Hearing on Motion” scheduled for September 28, 2016. It did not otherwise identify the motion, and no written pleading was filed in the case. At the hearing on September 28, 2016, the court stated that the purpose of the hearing was “because the State filed or actually I don’t—orally or asked the court to reconsider” the dismissal. Defense counsel asserted that no oral motion had been made on the record. The court reset the hearing for December 1, 2016, to allow appellant time to get a transcript to determine if a motion to reconsider had been made.

At the hearing on December 1, 2016, the court stated that it was going to grant the State's motion to reconsider the dismissal. Appellant objected, asserting that the transcript confirmed that no motion to reconsider had ever been made on the record and thus the case was closed. The State replied that it would “just stand on their oral motion.” The court then granted the State's motion to reconsider and set the case for a status hearing on December 13, 2021. The court entered an order memorializing its rulings on December 6, 2016. Appellant filed an appeal from the December 6, 2016, order.

The parties agree that the court's dismissal of the case was error. Arkansas Code Annotated section 5-2-310 provides that if a court determines that a defendant "lacks fitness to proceed, the proceeding against him or her shall be suspended" until restoration of fitness. Ark. Code Ann. § 5-2-310(a)(1)(A) (Repl. 2013). The statute authorizes a circuit court to dismiss criminal charges pending against a defendant who has previously been found unfit to proceed "if the court determines that the defendant has regained fitness to proceed" and "the court is of the view that so much time has elapsed since the alleged commission of the offense in question that it would be unjust to resume the criminal proceeding[.]" Ark. Code Ann. § 5-2-310(c) (Repl. 2013); *see also State v. Thomas*, 2014 Ark. 362, 439 S.W.3d 690 (holding this statute does not give a circuit court authority to dismiss criminal charges against an unfit defendant).

We hand down a companion case today, *Schepp v. State*, 2017 Ark. App. 677, which concerns the identical issue on appeal and nearly identical legally significant facts. As in *Schepp*, appellant here argues that the circuit court had no jurisdiction to reconsider its order dismissing the case against him because the State filed neither a motion nor an appeal within thirty days of entry of the order of dismissal. For the reasons we set forth in *Schepp*, we dismiss this appeal. The court's order dismissing the case was entered on July 18, 2016. The State had a right to appeal the decision and did not. *See State v. Thomas, supra* (holding State's appeal of erroneous decision under Ark. Code Ann. § 5-2-310 was appealable pursuant to Ark. R. App. P.–Crim. 3). Once the State failed to pursue this remedy by filing an appeal within 30 days of the dismissal, the circuit court lost jurisdiction. Therefore, the court's order entered on December 6, 2016, reconsidering its dismissal, reinstating the case, and

setting a status hearing is a nullity. And when a circuit court lacks jurisdiction, we do not acquire jurisdiction on appeal. *C.H. v. State*, 2010 Ark. 279, at 15, 365 S.W.3d 879, 886; *Jackson v. State*, 2010 Ark. 157, at 4; and *Thomas v. State*, 345 Ark. 236, 45 S.W.3d 818 (2001).

Appeal dismissed.

VIRDEN and HARRISON, JJ., agree.

*Dusti Standridge*, for appellant.

*Leslie Rutledge*, Att’y Gen., by: *Christian Harris*, Ass’t Att’y Gen., for appellee.