

ARKANSAS COURT OF APPEALS

DIVISION II

No. CR-17-833

JAMES EDWARD WHITNEY
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered: February 14, 2018

APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[NO. 72CR-13-912]

HONORABLE MARK LINDSAY,
JUDGE

DISMISSED

MIKE MURPHY, Judge

Appellant James Whitney appeals from an order entered by the Washington County Circuit Court denying his motion for return of seized property. We must dismiss this appeal without prejudice for lack of a final and appealable order as required by Arkansas Rule of Criminal Procedure 15.2.

This case stems from Whitney's conviction of eighteen counts of possession of child pornography.¹ In May 2013, a search warrant return listing twelve items seized from Whitney was filed of record. In June 2016, Whitney submitted directly to the circuit court a pro se motion for the return of seized property. In a letter addressed to Whitney, the circuit court returned the motion and accompanying documents because Whitney was

¹We affirmed the conviction on appeal in *Whitney v. State*, 2017 Ark. App. 341, 520 S.W.3d 326.

represented by counsel in the direct appeal from his conviction at the time. The circuit court further explained that it would recognize any filings made by the attorney of record.

In July 2017, after he had exhausted his right to an appeal of his convictions, Whitney filed a pro se motion for the return of seized property with the Washington County Circuit Court clerk. The motion included items not listed in the 2013 search-warrant-return filing. Subsequently, without conducting a hearing, the circuit court filed an order denying the motion for failure to state facts upon which relief could be granted. Thereafter, Whitney filed his notice of appeal.

Arkansas Rule of Criminal Procedure 15.2 governs motions for the return or restoration of seized things. Subsection (e) provides that an order denying such a motion shall be reviewable on appeal upon certification by the court having custody of such things that they are no longer needed for evidentiary purposes. A certification by the circuit court that the items seized “are no longer needed for evidentiary purposes” protects against a futile appeal from a denial of a motion to return seized things when the items are needed for future proceedings. *Slots, Inc. v. State*, 342 Ark. 609, 612, 30 S.W.3d 105, 107 (2000).

Here, we are presented with an order denying the motion, but the order does not contain a certification from the circuit court that the items seized are no longer needed for evidentiary purposes. In keeping with our policy against piecemeal appeals, we must dismiss this case for lack of a final order. *See Slots, supra*.

Dismissed.

VIRDEN and KLAPPENBACH, JJ., agree.

James E. Whitney, pro se appellant.

Leslie Rutledge, Att’y Gen., by: *Jason Michael Johnson*, Ass’t Att’y Gen., for appellee.