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SUPREME COURT OF ARKANSAS

No. CR12-861

STATE OF ARKANSAS APPELLANT V. STEVEN CARL WILLIAMS APPELLEE	**Opinion Delivered** April 18, 2013 APPEAL FROM THE BENTON COUNTY CIRCUIT COURT [NO. CR 09-361-2] HONORABLE JON B. COMSTOCK, JUDGE APPEAL DISMISSED.

KAREN R. BAKER, Associate Justice

The State has appealed the Benton County Circuit Court's order granting a directed verdict in favor of the Appellee, Steven Carl Williams, based on the circuit court's findings in a theft-of-services case against Williams. This court has jurisdiction pursuant to Ark. Sup. Ct. R. 1-2(a)(5)-(6) (2012), as the case presents an issue of first impression and an issue that needs clarification of the law. We dismiss the appeal.

The facts are largely undisputed. On February 7, 2009, Williams was arrested for two counts of sexual assault in the second degree and contributing to the delinquency of a minor. The Benton County Circuit Court set Williams's bail at $75,000. Later that day, Williams contacted Action Bonding, LLC ("Action"). Action's bail-bond agent, Jeff Smith, went to meet with Williams. Williams completed a portion of the bond paperwork, including an application which stated a premium of $7,570 was due, but the application also indicated that

Williams had paid the $7,570 and that $0 was due.[1] Without receiving payment, Smith executed the bond and Williams was released from the Benton County jail. Smith testified that the following day, on February 8, 2009, he picked Williams up at Williams's temporary residence and went to a storage unit where Williams indicated he had the $7,570 cash. Williams could not find the cash, but instead wrote a check from his business account, dated February 9, 2009, and assured Smith the "check was good." The next morning, February 9, 2009, Action presented the check for payment, but the account had been closed. Williams was taken into custody and returned to the Benton County jail. On March 20, 2009, Williams was charged with theft of services in violation of Ark. Code Ann. § 5-36-104 (Repl. 2006) for his failure to pay Action the $7,570.

After a bench trial in the Benton County Circuit Court, on July 26, 2012, the circuit court granted Williams's motion for directed verdict. From that order, the State brought this appeal. The State appeals on two grounds: (1) the circuit court erred in finding that, as a matter of law, the definition of "services" under Arkansas's theft-of-services statute, Ark. Code Ann. § 5-36-104, does not include the services provided by bail-bonding companies; and (2) the circuit court erred in finding that, as a matter of law, the requisite fraudulent intent under Ark. Code Ann. § 5-36-104 cannot be established when the services are obtained in exchange for a future promise to pay.

As an initial matter, we must determine whether this is a proper State appeal. First,

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[1]The premium due was $7,500. The application also included $70 in fees, for a total of $7,570 for the execution of the $75,000 bond.

under Rule 3 of the Arkansas Rules of Appellate Procedure–Criminal, the right of appeal by the State is limited. We have consistently held that there is a significant difference between appeals brought by criminal defendants and those brought on behalf of the State. Ark. R. App. P.–Crim. 3 (2012); *State v. Williams*, 348 Ark. 585, 75 S.W.3d 684 (2002). "The former is a matter of right, whereas the latter is neither a matter of right, nor derived from the Constitution, but rather is only granted pursuant to the confines of Rule 3. We accept appeals by the State when our holding would be important to the correct and uniform administration of the criminal law." *Williams*, 348 Ark. at 588, 75 S.W.3d at 687. Further, we do not permit State appeals merely to demonstrate the fact that the trial court erred. *State v. Stephenson*, 330 Ark. 594, 955 S.W.2d 518 (1997).

Accordingly, where a State appeal fails to present an issue of interpretation of the criminal rules with widespread ramifications, this court has held that such an appeal does not involve the correct and uniform administration of the law. *Williams*, 348 Ark. 585, 75 S.W.3d 684. Similarly, where the resolution of the issue on appeal turns on the facts unique to the case or involves a mixed question of law and fact, the appeal is not one requiring interpretation of our criminal rules with widespread ramification, and the matter is not appealable by the State. *Id.* Finally, where an appeal raises an issue of the application, and not interpretation, of a criminal rule or statutory provision, it does not involve the correct and uniform administration of the criminal law and is not appealable by the State under Rule 3. *Id.*

For its first point on appeal, the State asserts that the circuit court erred in finding that,

as a matter of law, the definition of services under Ark. Code Ann. § 5-36-104, does not include the services provided by bail-bond companies. *See* Ark. Code Ann. § 5-36-104 (Repl. 2006). The State contends that this issue is one of first impression interpreting Ark. Code Ann. § 5-36-104 and the services that fall within the parameters of the statute. The State requests that we declare that the circuit court committed an error of law by narrowly interpreting the definition of "services," excluding the services of Action and bail-bond-service companies.

Williams responds that the circuit court did not err; rather, the circuit court made a finding limited to Williams's contract with Action.

The circuit court directed a verdict for Williams, finding as follows:

> The Court finds, as a matter of law, that the bail bond contract (as evidenced by the State's Exhibits) does not constitute "services" as that term is used in ACA 5-36-104(a)(1), as is made evident from a full reading of the statute as to what is the intended subject matter of the statute.
>
> Additionally, the Court finds that the bail bond contract does not constitute "professional services" as that term is used in ACA 5-36-101(9).
> . . . .
>
> In this case, the testimony from the State's witnesses was uncontroverted that the agent for the bonding company secured the release of the Defendant from the jail, despite the fact that no payment had in fact been made by the Defendant prior to or at the time of the custody release. This is so, even though the bail bond documents (State's Exhibits) reflect that on the day of release, the Defendant had a zero balance due to the bonding company.
>
> Since the bonding company elected to obtain the release of the Defendant, though no payment had been received prior to the release (as required to fall within the definition of a state authorized "bail bond"), the bonding company simply assumed a business risk as to whether or not the Defendant would subsequently honor his oral commitment to pay the required fee for issuance of the bond.

Here, the circuit court's findings are specific to the factual situation presented in Williams's case. The State relies on portions of the circuit court's ruling from the bench and contends that the circuit court's finding has widespread application to all bail-bonding companies. However, where there are differences between the oral ruling and the written order, the circuit court's written order controls. *See McGhee v. Ark. State Bd. of Collection Agencies*, 368 Ark. 60, 243 S.W.3d 278 (2006). Our review of the record demonstrates that the circuit court's order specifically found that the State had failed to present evidence that Williams had violated Ark. Code Ann. § 5-36-104. Accordingly, the State's first point on appeal raises an issue of the application, and not interpretation, of Ark. Code Ann. § 5-36-104. Therefore, the issue presented does not involve the correct and uniform administration of the law and is not appealable by the State under Rule 3. *See also State v. Boyette*, 362 Ark. 27, 207 S.W.3d 488 (2005). We dismiss the State's first point on appeal.

For its second point on appeal, the State asserts that the circuit court erred by finding that, as a matter of law, the requisite fraudulent intent under Ark. Code Ann. § 5-36-104 cannot be established when the services are obtained in exchange for a future promise to pay.

The State claims it should be permitted to appeal on this point because the circuit court's finding held that a future promise to pay for services, under any circumstances, cannot establish the requisite fraudulent intent under Ark. Code Ann. § 5-36-104. However, we decline to reach the merits of this issue as the error asserted by the State involves the sufficiency of the evidence, rather than an error of law. Thus, it is not an issue appealable by the State.

In granting Williams's motion for directed verdict on this second point, the circuit court made the following finding:

> The second grounds for directed verdict is the failure to present sufficient evidence as to the defendant's state of mind relative to an intent to engage in "deception."
> . . . .
>
> The Court concludes that it simply has no proper way to evaluate whether or not there was an intent to deceive on the part of the Defendant at the time he delivered the check. Speculation would be required in order to conclude the State had met its burden of proof at this stage of the proceedings.

It is clear that the circuit court's determination is specific to Williams's promise to pay in the future and was a determination made based on the sufficiency of the evidence, not an interpretation of the law as the State claims. The State is not allowed to appeal from a directed verdict acquitting the defendant when the sole issue is the sufficiency of the evidence of the defendant's guilt. *State v. Dixon*, 209 Ark. 155, 189 S.W.2d 787 (1945). "The question of the legal sufficiency of the evidence in a given case constitutes a question of law for the decision of the court, but it cannot become a precedent for application in another case because of the varying state of facts in different cases, and therefore the decision of that, even though it be one of law, is not important in the uniform administration of the criminal law." *Id.* at 158, 189 S.W.2d at 789.

Appeal dismissed.

Dustin McDaniel, Att'y Gen., by: *Rebecca Kane*, Ass't Att'y Gen., for appellant.

DWSA Law Group, by: *Nick Churchill*, for appellee.