

Court of Appeals of the State of Georgia

ATLANTA, May 27, 2015

The Court of Appeals hereby passes the following order:

A15I0189. RHONDA JOHNSON v. THE STATE.

Rhonda Johnson was charged with possessing cocaine with intent to distribute, and she filed a motion to dismiss. On April 9, 2015, Presiding Senior Judge Michael Hancock denied the motion. Johnson then obtained a certificate of immediate review signed by a different judge, and she filed this application for interlocutory appeal. We lack jurisdiction.

Under OCGA § 5-6-34 (b), a party may apply for interlocutory appellate review “[w]here *the trial judge* in rendering an order, decision, or judgment, not otherwise subject to direct appeal . . . certifies within ten days of entry thereof that the order, decision, or judgment is of such importance to the case that immediate review should be had.” (Emphasis supplied.) The plain language of the statute requires that the same judge who enters the order in question must certify it for immediate review.¹ See *Mauer v. Parker Fibernet, LLC*, 306 Ga. App. 160, 162 (701 SE2d 599) (2010).

Because the certificate of immediate review submitted by Johnson is invalid, it does not confer jurisdiction upon this Court. Accordingly, the application for interlocutory appeal is hereby DISMISSED.

¹ This Court has recognized a limited exception to this rule where evidence shows that the trial judge was unavailable to execute the certificate. See *Freemon v. Dubroca*, 177 Ga. App. 745 (1) (341 SE2d 276) (1986); *Tingle v. Harvill*, 125 Ga. App. 312, 317-318 (2) (187 SE2d 536) (1972); see also *Thorpe v. Russell*, 274 Ga. 781, 781-782 (559 SE2d 432) (2002). But Johnson has made no showing that Judge Hancock was unavailable.



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Clerk's Office, Atlanta, 05/27/2015

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Stephen E. Castle

, Clerk.