Court of Appeals
of the State of Georgia

ATLANTA, May 02, 2016

The Court of Appeals hereby passes the following order:

A16A1367. SAM CHARLES v. THE STATE.

A jury found Sam Charles guilty of rape, aggravated sexual battery, and two counts of child molestation, and his attorney filed a motion for new trial. During the pendency of the motion, Charles alternately indicated his intent to retain counsel, to use the services of the public defender or to represent himself. On February 11, 2015, following a hearing on Charles's obligations and rights, the court entered an order finding that Charles had waived his right to counsel. Charles filed a notice of appeal directly appealing from that order on March 12, 2015. We, however, lack jurisdiction.

The order Charles seeks to appeal is not a final judgment since his motion for new trial remained pending below. Accordingly, at the time Charles filed his notice of appeal he was required to comply with the interlocutory appeal requirements. See OCGA § 5-6-34 (b); see also *Hann v. State*, 292 Ga. App. 719, 720 (1) (665 SE2d 731) (2008) (while a motion for new trial is pending, appeals must comply with the interlocutory appeal requirements).[1] For this reason, this appeal is hereby DISMISSED for lack of jurisdiction.

[1] We cannot construe the notice of appeal as a premature notice of Charles's wish to appeal the subsequently entered April 30, 2015 final order disposing of his motion for new trial because the notice of appeal does not refer to the final order. See *Southwest Health & Wellness, LLC v. Work*, 282 Ga. App. 619, 622 (1) (a) (639 SE2d 570) (2006) (jurisdiction is determined based on appealability of order specified in notice of appeal).

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 05/02/2016

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. Castlen, *Clerk.*