

COURT OF APPEALS OF THE STATE OF GEORGIA

Latisha Shana McCoy v. The State

A16I0192 · No. A16I0192 · Decided May 11, 2016

SUMMARY

The Georgia Court of Appeals dismissed Latisha Shana McCoy’s application for an interlocutory appeal concerning the denial of her motion to suppress evidence from a roadblock-related driving-under-the-influence arrest. The court held that the trial court’s certificate of immediate review was untimely because it was entered more than ten days after the order denying reconsideration.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	May 11, 2016
DOCKET	A16I0192
DISPOSITION	dismissed
PROCEDURAL POSTURE	Application for interlocutory appeal from the denial of a motion to suppress and a motion for reconsideration.
STANDARD OF REVIEW	Jurisdictional review of the timeliness of a certificate of immediate review.
PRECEDENTIAL VALUE	Published
PARTIES	Latisha Shana McCoy v. The State

TOPICS

- interlocutory appeal
- appellate jurisdiction
- appellate procedure
- criminal procedure

PRACTICE AREAS

- criminal procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Court of Appeals had jurisdiction to review the denial of McCoy's motion to suppress and motion for reconsideration when the certificate of immediate review was entered 50 days after the order at issue.

HOLDINGS

1. A certificate of immediate review must be entered within ten days after entry of the order sought to be reviewed; a certificate entered after that period is untimely, and the party must wait until final judgment to appeal.

KEY QUOTATIONS

“If the certificate of immediate review is not entered within that ten-day period, it is untimely, and the party seeking review must wait until the final judgment to appeal.”

FACTUAL BACKGROUND

McCoy was stopped at a roadblock and eventually arrested for driving while intoxicated. She challenged the constitutionality of the roadblock through a motion to suppress. The trial court denied that motion and later denied her motion for reconsideration.

PROCEDURAL HISTORY

McCoy was stopped at a roadblock and arrested for driving while intoxicated. The trial court denied her motion to suppress on December 17, 2015, and denied her motion for reconsideration on February 22, 2016. Although the trial court granted her petition for a certificate of immediate review on April 12, 2016, McCoy filed the interlocutory appeal application more than ten days after the order at issue. The Court of Appeals dismissed the application for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Turner v. Harper, 231 Ga. 175, 176 (200 SE2d 748) (1973)

OPINION

PER CURIAM.

Court of Appeals of the State of Georgia ATLANTA, _____ May 10, 2016 The Court of Appeals hereby passes the following order: A16I0192. LATISHA SHANA MCCOY v. THE STATE. Latisha Shana McCoy was stopped at a roadblock and was eventually arrested for driving while intoxicated. She filed a motion to suppress asserting the roadblock was unconstitutional.

On December 17, 2015, the trial court denied her motion to suppress. McCoy filed a motion for reconsideration, which was denied by the trial court on February 22, 2016. McCoy filed a petition for certificate of immediate review.

On April 12, 2016, the trial court entered an order granting McCoy's petition. McCoy subsequently filed this application for an interlocutory appeal on April 18, 2016, seeking to appeal the denial of her motion to suppress and her motion for reconsideration.

We, however, lack jurisdiction. Pursuant to OCGA § 5-6-34 (b), a party may request interlocutory review only if the trial court certifies within ten days of entry of the order at issue that immediate review should be had. If the certificate of immediate review is not entered within that ten-day period, it is untimely, and the party seeking review must wait until the final judgment to appeal.

See OCGA § 5-6-34 (b); *Turner v. Harper*, 231 Ga. 175, 176 (200 SE2d 748) (1973). Here, the order denying the motion for reconsideration was entered on February 22, 2016, but the certificate of immediate review was not entered until 50 days later on April 12, 2016.

Because the trial court did not enter the certificate of immediate review within ten days of entry of the order at issue, we lack jurisdiction to consider this application, which is hereby DISMISSED. Court of Appeals of the State of Georgia 05/10/2016 Clerk's Office, Atlanta,_____ 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., Clerk.