

FOR OFFICIAL PUBLICATION

**SUPERIOR COURT OF THE VIRGIN ISLANDS
APPELLATE DIVISION OF ST. CROIX**

VERNON PRENTICE, JR.

CASE NO. SX-13-CR-112

Petitioner on Review,

V.

PEOPLE OF THE VIRGIN ISLANDS,

Respondent on Review.

On Appeal from the Magistrate Division
District of St. Croix
Superior Court Magistrate: Hon. Jessica Gallivan

APPEARANCES:

LESLIE DAVIS, ESQ.

**Assistant Territorial Public Defender
Office of the Territorial Public Defender
Kingshill V.I., 00850
For Petitioner**

ZULEYMA CHAPMAN, ESQ.*

**Assistant Attorney General
Virgin Islands Department of Justice
Christiansted, VI 00820
*For Respondent***

MEMORANDUM OPINION

MOLLOY, Judge

THIS MATTER is in the Appellate Division on appeal from the Magistrate Division. For the reasons explained below, the Court concludes that the Appellate Division does not have jurisdiction

* Counsel for the People of the Virgin Islands before the Magistrate Division. The Court takes judicial notice that counsel has since left the Department of Justice. Substitute counsel has not appeared.

to address the merits of this appeal because Prentice has not been sentenced. The Appellate Division has jurisdiction to hear appeals from final orders issued by the Magistrate Division. The final order in a criminal case is the written judgment embodying a conviction and sentence. Since the Magistrate Court has not issued a final order, Prentice's appeal is premature. Accordingly, the Court will hold his appeal in abeyance and remit the matter to the Magistrate Division for the Magistrate Court to sentence Prentice and issue a written judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

Following a July 30, 2014 bench trial that resulted in an August 11, 2014 order, Vernon Prentice, Jr. was convicted of simple assault and battery (domestic violence). Sentencing was scheduled for October 15, 2014. However, on August 20, 2014, Prentice appealed his conviction to the Appellate Division of the Superior Court. The Clerk's Office assigned the appeal to the undersigned judicial officer on August 25, 2014 and this Court, by order entered August 29, 2014, granted his request to have the Superior Court absorb the cost of preparing a transcript per *In re: Payment for the Preparation of Transcripts Requested by the Office of the Territorial Public Defender*, ST-14-MC-036, 2014 V.I. LEXIS 90 (V.I. Super. Ct. Aug. 1, 2014) (Superior Court shall pay court reporters for transcripts requested by public defenders). The transcript was submitted on September 10, 2014 and Prentice submitted his appellate brief on September 24, 2014. *Cf.* Super. Ct. R. 322.1(i)(A) ("Unless otherwise ordered by a judge of the Court, the petitioner shall serve and file a brief within fourteen (14) days after submission of the transcript in the case, or after a briefing schedule is issued, whichever comes first."). On October 9, 2014—six days before the scheduled October 15, 2014 sentencing hearing—the Magistrate Court *sua sponte* continued sentencing without date because "Defendant's Counsel filed a Petition for Review of the Court's Order of August

11, 2014, finding Defendant guilty.” (Order 1, entered Oct. 9, 2014 (comma omitted).) Neither the People nor Prentice has filed anything further to date.

II. JURISDICTION AND DISCUSSION

The Magistrate Division of the Superior Court has jurisdiction to “hear . . . misdemeanor criminal cases” 4 V.I.C. § 123(a)(4). “All appeals from the Magistrate Division . . . must be filed in the Superior Court.” *Id.* § 125. “The Appellate Division of the Superior Court was established to hear the appeals from the Magistrate Division.” *Dennie v. People*, 66 V.I. 143, 149 (Super. Ct. App. Div. 2017). However, the Appellate Division hears appeals from final orders or judgments issued by the Magistrate Division. *See* Super Ct. R. 322.1(a) (“Final orders or judgments of magistrate judges resolving completely the merits of cases which came before them pursuant to their original jurisdiction, as provided by 4 V.I.C. § 123(a), are immediately reviewable by judges of the Superior Court of the Virgin Islands.”). This Court concurs that “Superior Court Rule 322.1(a) should be interpreted as the final judgment rule.” *Valerino v. Manning*, SX-15-RV-005, 68 V.I. ___, ___, 2018 V.I. LEXIS 28, *31 (V.I. Super. Ct. App. Div. 2018). “[C]riminal cases conclude with the entry of a written judgment.” *Reyes*, 68 V.I. at ___; 2018 V.I. LEXIS 40 at *2 (V.I. Super. Ct. App. Div. Apr. 12, 2018) (citing *Williams v. People*, 58 V.I. 341, 345 (V.I. 2013)). Therefore, the written judgment embodying both a conviction and a sentence is the final order in a criminal case from which an appeal can be taken. *See Williams*, 58 V.I. at 345 (“This Court has stated, in virtually every criminal case that has come before it on appeal, that the written judgment embodying the adjudication of guilt and the sentence imposed based on that adjudication constitutes a final judgment.” (citations omitted)).

Here, the Magistrate Court has not sentenced Prentice. So, there is no final order yet. As a result, the Appellate Division does not have jurisdiction. In fact, Prentice’s appeal will not be

“deemed filed” in the Appellate Division until a written judgment has been entered. *Cf.* Super. Ct. R. 322.1(b)(2)(C) (an appeal “filed after an oral decision but before entry of a written order or judgment, it is deemed filed as of the date of the written order or judgment appealed from.”). Given the amount of time that has passed since October 9, 2014 Order, it is apparent that the Magistrate Court concluded that it lacks the authority to sentence Prentice because he filed an appeal. *See* Super. Ct. R. 322.1(e) (“A magistrate judge whose order is being challenged on review may not enter any subsequent order in the case after a petition for review is filed.”). But the Appellate Division also does not have jurisdiction yet because there is no final order. The question now is how to resolve the impasse.

Another Appellate Division judge, addressing an appeal in the same posture as this case, concluded that the better course was to address the merits of the appeal and then remand the case to the Magistrate Division for the magistrate court to sentence the defendant and enter a written judgment. *See Reyes*, 68 V.I. at ____; 2018 V.I. LEXIS 40 at *34. There, as here, the defendant had filed an appeal after trial but before sentencing and the magistrate court continued based on the appeal. After considering the different rules governing the Magistrate and Appellate Divisions of the Superior Court, the appellate court concluded that the magistrate court had erred by not sentencing the defendant. *Cf. id.* at ____; 2018 V.I. LEXIS 40 at *23 (“Because of the lack of any binding or persuasive precedent regarding Rule 322.1, this Court is reluctant to say that the Magistrate Court erred by declining to sentence Reyes. But it did.”).

This Court cannot agree that the Magistrate Court “erred” by not sentencing Prentice. Superior Court Rule 322.1(e)(5) directs that the Magistrate Division “has no jurisdiction to act on any matter in the case, or to enter any order, after the filing of a petition for review.” Since “[a]ll

questions surrounding the Magistrate Division have not been laid to rest,” and because “[c]ourts have had to continually reexamine the impact of the changes the Legislature made,” *Valerino*, 68 V.I. at ____; 2018 V.I. LEXIS 28 at *36, this Court cannot conclude that the Magistrate Court erred by taking a “hands-off approach.” *Reyes*, 68 V.I. at ____; 2018 V.I. LEXIS 40 at *12 (quotation marks omitted). The law was unsettled. *Cf. United States v. Fields*, 777 F.3d 799, 805 (5th Cir. 2015) (“If the law is unsettled within the circuit, any error cannot be plain.” (footnote omitted)); *United States v. Heron*, 721 F.3d 896, 902 (7th Cir. 2013) (“Indeed, if the law is unsettled or unexplored, we would want to see more than one lone opinion before we found plain error.” (citation omitted)).

Not to be overlooked is the fact that “[c]ases . . . belong to the parties, not the attorneys,” *In re: Asbestos, Catalyst & Silica Toxic Dust Exposure Litig.*, 67 V.I. 544, 557 (Super. Ct. 2017) (quotation marks and citation omitted), or the courts. The People of the Virgin Islands brought this case against Prentice. They had a duty to ensure that it was timely prosecuted.¹ Counsel for Prentice also had a duty to her client to ensure his rights were protected, including his right to a timely sentencing, *cf.*

¹ Regrettably, the Virgin Islands Department of Justice has had a pattern of abandoning criminal and petty offense cases appealed to the Appellate Division in the District of St. Croix. *Cf. Dennie v. People*, 66 V.I. 143, 148 (Super. Ct. App. Div. 2017) (“Since the Court could not proceed to address the merits until a judgment was entered, the Court exercised its discretion to allow the People additional time to respond. The People did not respond.” (quotation marks and citation omitted)); *George v. People*, SX-16-RV-002, 2017 V.I. LEXIS 58, *4 (V.I. Super. Ct. App. Div. Apr. 5, 2017) (“The court did, however, give the People a deadline to respond. They did not and therefore forfeited the right to be heard on review.” (citing Super. Ct. R. 322.1(i)(G)(ii)); *People v. Melendez*, SX-16-RV-003, 2017 V.I. LEXIS 49, *4 (V.I. Super. Ct. Mar. 22, 2017) (“Although the Clerk’s Office issued both parties a briefing letter — to Melendez directly, with a copy to counsel for the People—neither party filed a brief on review.”); *People v. Mayers*, SX-14-MV-190, 2016 V.I. LEXIS 6, *5 (Super. Ct. App. Div. Jan. 19, 2016) (“People had waived its right to be heard on appeal” because no brief was filed); *People v. Joseph*, SX-15-RV-006, 2016 V.I. LEXIS 5, *3 (Super. Ct. App. Div. Jan. 19, 2016) (“The People did not file a brief or otherwise participate in this internal appeal.”). *But cf. David*, 2016 V.I. LEXIS 15 at *8 (“David filed her brief on July 22, 2015. The People filed their response on July 30, 2015.”). Here too, counsel for the People did not file a brief or otherwise respond to Prentice’s appeal and substitute counsel has not appeared. *See, supra*, note *. In at least one instance where counsel had since resigned, the Clerk’s Office served the Office of the Solicitor General within the Department of Justice since the Solicitor General handles appeals for the Department of Justice and the Appellate Division is an appellate court. *See Ortiz v. People*, 66 V.I. 124, 133 (Super. Ct. App. Div. 2017). “Ours is an adversarial system, and judges depend upon input from lawyers. . . . [But] a judge rarely performs his functions adequately” “when the case before him is [not] adequately presented.” *Nomanbhoy Family Ltd. P’ship v. McDonald’s Corp.*, 579 F. Supp. 2d 1071, 1076 (N.D. Ill. 2008) (quotation marks and citations omitted).

Super. Ct. R. 134, and timely appellate review. Yet in over four years, neither the People nor Prentice have inquired about the status of this case. This is not to say that a litigant's failure to inquire about a case absolves the court. Courts do have an obligation to ensure that cases proceed at an appropriate pace. *Cf. In re: Fleming*, 56 V.I. 460, 465 (V.I. 2012) (“[A] trial judge has . . . [a] duty to rule within a reasonable time.” (quotation marks, ellipsis, and citation omitted)). But “a judge possesses considerable discretion in how to dispose of the matters on his or her docket.” *In re: Application for Custody of N.A.W.*, 61 V.I. 145, 152, n.5 (V.I. 2014). And “not all failures to rule, even if for an extended period of time, qualify for mandamus relief.” *Fleming*, 56 V.I. at 465 (V.I. 2012). Instead, “each situation must be considered on its own facts.” *Id.* (quotation marks, brackets, and citation omitted). Here, the facts in this situation show inaction on the part of all involved: the Magistrate Division, the Appellate Division, the parties, and the Clerk's Office.² “Occasionally, some cases fall through the cracks in the system and, unfortunately, this was one of those cases.” *United States v. Strauss*, 88-CR-20023, 1990 U.S. Dist. LEXIS 19098, *1 (N.D. Ill. Aug. 28, 1990).³ In this

² Part of the reason for the delay is the insistence by the Clerk's Office—for those appeals filed before 2015—that cases appealed to the Appellate Division remain assigned on the Superior Court's internal electronic docketing system to the magistrate (or judge) who presided over the case, making it difficult for the Appellate Division judges to keep track of their appeals. *Accord Reyes*, 68 V.I. at ___ n.6; 2018 V.I. LEXIS 40 at *21 n.6 (“[S]ince the judge code on the electronic docket was not changed to reflect that the case was now in the Appellate Division and assigned to a different judicial officer on review, it further meant that judges, magistrates, and their staff, as well certain court clerks, could *not* run reports and identify all cases assigned to that specific judge.” (quotation marks, brackets, and citation omitted)). No judge can be aware of the hundreds of cases assigned to them, especially if a case is not formally reassigned on the electronic docketing system. *Accord Hudak v. Med. Lien Mgmt., Inc.*, 305 P.3d 429, 432 (Colo. Ct. App. 2013) (“[T]rial judges should not be expected to unilaterally review the hundreds of files assigned to them in search of motions which have been filed but have not been set for hearing or otherwise brought to the court's attention. Litigants have an affirmative obligation to move their cases to resolution.” (quoting *Erickson v. Breedlove*, 937 So. 2d 805, 807 (Fla. Dist. Ct. App. 2006))).

³ *Accord Harris v. Smith*, 17-cv-663-pp, 2018 U.S. Dist. LEXIS 49321, *22 (E.D. Wis. Mar. 26, 2018) (“This court should have promptly ruled on the respondent's motion. The court did not do so, and it has no excuse other than to say that the motion fell through the cracks of the court's case tracking system.”); *United States v. Westcott*, 3:06-po-97, 2013 U.S. Dist. 181840, *2 (S.D. Ohio Dec. 27, 2013) (appeal to federal district court in criminal case tried by federal magistrate judge delayed after conviction and sentencing) (“Unfortunately, at that point, this case slipped through the cracks on the Court's docket, and the undersigned judge only recently discovered that this appeal was still pending. To the Court's knowledge, neither counsel for the Government nor counsel for Defendant has made any attempt to inquire as to the

instance, however, it appears that the case fell through the cracks because of the uncertainty in the law and the conflation of “review” with “appeal.” *Cf. Baumann v. Pub. Empls. Rel. Bd.*, SX-11-CV-417, 68 V.I. ___, ___; 2018 V.I. LEXIS 31, *25 (V.I. Super. Ct. Mar. 16, 2018) (“While review and certiorari are akin to appeal, they are not the same.” (citations omitted)); *Xavier v. Treasure Bay V.I. Corp.*, 67 V.I. 251, 265 n.7 (Super. Ct. 2017) (“The Legislature did not attach any conditions to appeals from the Magistrate Division, except that such appeals must be filed in the Superior Court. If a petition for review functions like other petitions, such as a petition for a writ of mandamus or for a writ of habeas corpus in which a *prima facie* case must be shown first, then a petition for review might not be proper. Appeals typically proceed by notice because they are of right, whereas petitions proceed by permission and thus must be granted.” (citations omitted)).

This Court joins the *Reyes* court in holding that “the divestiture rule governing the Magistrate Division of the Superior Court is limited by the final judgment rule governing the Appellate Division of the Superior Court.” 68 V.I. at ___; 2018 V.I. LEXIS 40 at *9. In other words,

Superior Court Rule 322.1(a) modifies Superior Court Rule 322.1(e). The former rule embodies the final judgment rule and permits an appeal only after a final judgment or order has entered completely resolving the merits of the case. The latter rule embodies the divestiture rule and removes jurisdiction from the Magistrate Division once an appeal has been filed, provided, however, that the magistrate court has finalized the order to be appealed.

Id. at ___; 2018 V.I. LEXIS 40 at *20. Accordingly, Superior Court Rule 322.1(e) must be construed to read that a magistrate court “whose [*final*] order is being challenged” on appeal “may not enter any

status of this case over the past five years. In any event, the Court is deeply embarrassed and apologizes for the lengthy delay in issuing this decision.”); *Harris v. State*, 956 A.2d 1273, 1276 (Del. 2008) (“Here, the record is devoid of any reason for why no activity occurred in Harris’s case from March 16, 2001, when the Superior Court granted Harris’s request for a continuance, until October 22, 2007, when the court mailed a summons to Harris advising him of his November 2, 2007 sentencing date. His case, as noted by the Superior Court, simply ‘fell through the cracks.’”). *But cf. Betterman v. Montana*, 136 S. Ct. 1609 (2016) (speedy trial right not impacted by sentencing delays).

subsequent order in the case" after an appeal has been filed. The August 11, 2014 Order is not final and will not become final until a written judgment is entered. The Magistrate Division retains jurisdiction to finalize the order being challenged on appeal.

III. CONCLUSION

For the reasons explained above, the August 11, 2014 Order is not a final order because the final order in a criminal case is the written judgment embodying a conviction and a sentence and Prentice has not been sentenced. Rather than dismiss this appeal, the Court will hold it in abeyance instead and remit the case to the Magistrate Court for it to impose a sentence and issue a written judgment. ⁴ Cf. *V.I. Conservation Soc'y v. Golden Resorts, LLLP*, S. Ct. Civ. No. 2009-0026, 2010 V.I. Supreme LEXIS 21, *2 (V.I. June 23, 2010) ("[W]e will hold this appeal in abeyance until such time as there is a final resolution as to the validity of the initial permit issued by default."). An appropriate order follows.

Date: April 18 2018

ATTEST:

ESTRELLA H. GEORGE

Clerk of the Court

By: [Signature]

Court Clerk/Supervisor

Dated: 4/18/18

[Signature]

ROBERT A. MOLLOY

Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY

This 18 day of 4 2018

ESTRELLA GEORGE

CLERK OF THE COURT

By [Signature] Court Clerk sup

⁴ Since a remand is either a record remand or a case remand, *see generally Hypolite v. People*, 51 V.I. 97, 102-03 (V.I. 2009) (*per curiam*) (quoting *McGowan v. Hodge*, 50 V.I. 296, 305 n.4 (V.I. 2008) (*per curiam*)), remit is more appropriate when the appellate court has or will have jurisdiction, but a case must be returned to the trial court for some purpose unrelated to the merits of the appeal. *See Black's Law Dictionary* 1486 (9th ed. 2014) (remit means "[t]o refer a matter for decision to some authority, esp. to send back a case to a lower court." (parentheses omitted)); *accord People v. Burts*, 574 N.E.2d 1024, 1024 (N.Y. 1991) (appeal to determine "whether the Appellate Division took the proper corrective remedy by holding the appeal in abeyance while it remitted for a posttrial Wade hearing."). A record remand is a limited return of the case to the trial court "to clarify or amplify some portion of the record, to make additional findings, to hear further testimony, or to explain a ruling." *Hypolite*, 51 V.I. at 102 (*McGowan*, 50 V.I. at 305 n.4). A case remand would terminate the appellate court's jurisdiction. Hence, the Court will remit this case to the Magistrate Division for it conclude the trial court proceedings.