Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

JIMMY DAVIS, Appellant/Defendant, v. **PEOPLE OF THE VIRGIN ISLANDS,** Appellee/Plaintiff.	))))))))	**S. Ct. Crim. No. 2015-0061** Re: Super. Ct. Crim. No. 231/2015 (STT)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Magistrate: Hon. Henry V. Carr III

Considered and Filed: December 16, 2015

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

Alexander Golubitsky, Esq.
Marjorie Rawls Roberts, P.C.
St. Thomas, U.S.V.I.
Attorney for Appellant,

Su-Layne U. Walker, Esq.
Assistant Attorney General
St. Thomas, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

PER CURIAM.

Appellant Jimmy Davis appeals from a July 2, 2015 oral ruling of the Magistrate Division of the Superior Court denying his motion to reduce bail. For the reasons that follow, we dismiss this appeal for lack of appellate jurisdiction.

I. BACKGROUND

On June 12, 2015, the People of the Virgin Islands arrested and subsequently charged Davis with one count of simple assault in violation of 14 V.I.C. § 299(2). Davis's bail was set at $1,000 at a hearing before the magistrate on June 16, 2015, and shortly thereafter he filed a motion to reduce his bail due to an inability to post that amount. The Magistrate Division of the Superior Court considered the motion at Davis's arraignment on July 2, 2015, and after hearing from both parties, orally denied the motion.

Davis filed a notice of appeal with this Court on July 10, 2015. In both of their respective appellate briefs, Davis and the People asserted that this Court could exercise jurisdiction over this appeal pursuant to 4 V.I.C. § 33(d)(4). This Court, in a November 25, 2015 order, noted that Davis sought to appeal a decision of the Magistrate Division directly to this Court, even though the matter had not yet been appealed to a Superior Court judge, and that we may therefore lack jurisdiction. *H&H Avionics, Inc. v. V.I. Port Auth.*, 52 V.I. 458, 463 (V.I. 2009). Consequently, this Court directed both parties to file supplemental briefs fully addressing whether this Court possesses jurisdiction over this appeal. The People filed a supplemental brief arguing that this Court's earlier decision in *H&H Avionics* compels us to dismiss this appeal for lack of jurisdiction; Davis, in contrast, maintains that the principles set forth in *H&H Avionics* do not bar his appeal.

II. JURISDICTION

Prior to considering the merits of an appeal, this Court must first determine if it has appellate jurisdiction over the matter. *V.I. Gov't Hosp. & Health Facilities Corp. v. Gov't of the V.I.*, 50 V.I. 276, 279 (V.I. 2008). In this case, the July 2, 2015 oral ruling was issued by the Magistrate Division of the Superior Court, and "[a]ll appeals from the Magistrate Division . . . must be filed in the Superior Court or to the Supreme Court, if appealable to the Supreme Court

as provided by law." 4 V.I.C. § 125. This Court, relying on case law interpreting the federal counterpart to section 125, concluded that "except for dispositive orders entered by magistrate in civil matters tried with the consent of the parties and the Presiding Judge pursuant to 4 V.I.C. § 123(d), orders entered by magistrates that have not been appealed to and reviewed by a Superior Court judge do not constitute final, appealable orders" for purposes of this Court's appellate jurisdiction. *H&H Avionics*, 52 V.I. at 462-63.

Although our pronouncement in *H&H Avionics* was unambiguous that all orders issued by the Magistrate Division, with the exception of those entered pursuant to 4 V.I.C. § 123(d), must be reviewed by a Superior Court judge before becoming appealable as of right to this Court, Davis maintains in his supplemental brief that this Court possesses jurisdiction over this appeal. According to Davis, our holding in *H&H Avionics* was limited to appeals from final judgments or orders under 4 V.I.C. §§ 32(a) and 33(a), which "end[] the litigation on the merits and leave[] nothing to do but execute the judgment.'" *In re Holcombe*, S. Ct. Civ. No. 2015-0007, __ V.I. __, 2015 V.I. Supreme LEXIS 39, at *16 (V.I. Nov. 25, 2015) (quoting *Rojas v. Two/Morrow Ideas Enters., Inc.*, 53 V.I. 684, 691 (V.I. 2010)). Davis maintains that since the criminal charges against Davis remain pending, the Magistrate Division's July 2, 2015 ruling is not final, and that his appeal is instead taken pursuant to 4 V.I.C. § 33(d)(4), which provides that

> An appeal by a defendant or person ordered detained pursuant to section 3504a, of title 5 of the Virgin Islands Code or other provision of law, shall lie to the Supreme Court from a decision or order, entered by the Superior Court, detaining a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order of detention. The appeal shall be determined promptly.

Davis reasons that this Court should construe section 33(d)(4) and section 125 so that an interlocutory appeal taken under section 33(d)(4) satisfies the "if appealable to the Supreme Court

as provided by law" proviso found in section 125.

As a threshold matter, we question whether Davis is correct that this Court possesses jurisdiction over this appeal under section 33(d)(4). This statute states that this Court has jurisdiction over an appeal from a decision or order "detaining a person charged with or convicted of an offense" that is entered pursuant to title 5, section 3504a of the Virgin Islands Code or other provision of law, or "denying a motion for revocation of, or modification of the conditions of, a decision or order of detention." 4 V.I.C. § 33(d)(4) (emphases added). *See Browne v. People*, 50 V.I. 241, 246 (V.I. 2008). Importantly, 5 V.I.C. § 3504a establishes a procedure for detaining a defendant without bail prior to trial. In this case, the Magistrate Division never issued an order detaining Davis; rather, it has authorized his release, provided that he posts bail in the amount of $1,000.

Significantly, this Court has already held that an appeal from the denial of a motion for reduction of bail is, in fact, an appeal from a final order, rather than an interlocutory appeal. This Court has recognized the collateral order doctrine, which applies to "a small class of prejudgment orders which finally determine claims of right separable from, and collateral to, rights asserted in the action, and are too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Beachside Assocs. v. Fishman*, 53 V.I. 700, 709 (V.I. 2010) (quoting *Enrietto v. Rogers Townsend & Thomas PC*, 49 V.I. 311, 319 (V.I. 2007)). Importantly, this Court has held that appeals from orders denying motions to reduce bail are reviewable under the collateral order doctrine. *Rieara v. People*, 57 V.I. 659, 665 (V.I. 2012) (collecting cases). Notably, courts have repeatedly held that orders appealed under the collateral order doctrine are final orders. *See Jones v. Braxton*, 392 F.3d 683, 686 (4th Cir. 2004) ("In other words, 'collateral orders' *are* final orders . . . . To characterize

the district court's order in this case as a 'collateral order' . . . would but *confirm* our conclusion that it is a 'final order.'") (emphases in original) (citing *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546 (1949)); *Hall v. New York*, 476 Fed. Appx. 474, 476 (2d Cir. 2012) (describing a collateral order as "a final judgment"); *Evans-Marshall v. Board of Educ. of Tipp City Exempted Village School Dist.*, 428 F.3d 223, 233 (6th Cir. 2005) (same) (quoting *Behrens v. Pelletier*, 516 U.S. 299, 307 (1996)); *In re Investigation Before April 1975 Grand Jury*, 531 F.2d 600, 605 n.8 (D.C. Cir. 1976) (same) (collecting cases). Thus, under Davis's own proposed interpretation of the statutes, a Superior Court judge must review the July 2, 2015 ruling before it can be appealed to this Court.

Nevertheless, even if we agreed with Davis that an appeal from an order denying a motion to reduce bail qualifies as an interlocutory appeal under section 33(d)(4), we would still conclude that the appeal must first be taken to a Superior Court judge pursuant to section 125. As we noted in *H&H Avionics*, the Virgin Islands Legislature modelled the statutes establishing the Magistrate Division of the Superior Court after its federal counterpart, title 28, chapter 43 of the United States Code. 52 V.I. at 461. Thus, "judicial decisions of federal courts of appeals considering the finality of magistrate orders . . . assist this Court in interpreting our local statute." *Id.* Importantly, the federal courts of appeals have held that bail and detention orders issued by a federal magistrate judge must first be appealed to, and reviewed by, a federal district judge, before a federal court of appeals may obtain jurisdiction to review the ruling. *See, e.g.*, *United States v. Cisneros*, 328 F.3d 610, 615 (10th Cir. 2003); *United States v. Cheeseman*, 783 F.2d 38, 41 (2d Cir. 1986). The District of Columbia, which has a similar statute, has also held that "[w]hile judgment by a magistrate judge is final for the purposes of the parties, it is not final for the purposes of this court." *Bradley v. District of Columbia*, 107 A.3d 586, 592-93 (D.C. 2015). Because "courts should

presume that when the Legislature creates a statute, it is aware of the long-standing procedures and practices of the courts . . . . it is difficult to see how the Legislature could have envisioned a different procedure being implemented in the Virgin Islands." *In re Holcombe*, S. Ct. Civ. No. 2015-0007, __ V.I. __, 2015 V.I. Supreme LEXIS 39, at *60 (V.I. Nov. 25, 2015); *see also Brooks v. Gov't of the V.I.*, 58 V.I. 417, 428 (V.I. 2013) (collecting cases). Consequently, we conclude that we lack jurisdiction over Davis's appeal, and that the matter should instead have been appealed to a Superior Court judge in the first instance.[1]

III. CONCLUSION

For the foregoing reasons, we dismiss this appeal for lack of appellate jurisdiction.

Dated this 16th day of December, 2015.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court

[1] In his supplemental brief, Davis contends that there is "no opportunity" for a Superior Court judge to review the bail decision in this case under Superior Court Rule 141(e) because there is no "assigned judge" to this case since simple assault is a misdemeanor that falls within the Magistrate Division's original jurisdiction, *see* 4 V.I.C. § 123(a)(4). However, to the extent that Superior Court Rule 141(e) was not implicitly repealed by the subsequent promulgation of Superior Court Rule 322 the following year, we note that Rule 141(e) provides that "[i]f a party is dissatisfied with a bail decision rendered by a magistrate, it may be immediately appealed to the assigned judge *or the Presiding Judge*." (Emphasis added). Consequently, the fact that there is no judge assigned to the underlying criminal case should not prevent Davis from obtaining appellate review in the Superior Court.