

IN THE SUPREME COURT OF MISSOURI

)	
STATE OF MISSOURI,)	
Respondent)	
)	
v.)	No. 84219
)	
BASSAM A. SAFFAF,)	
Appellant)	

**On Transfer to the Supreme Court of Missouri
From the Circuit Court for the 23d Judicial Circuit,
Jefferson County, Division 2,
Honorable Gary P. Kramer, Judge**

Appellant's Substitute Reply Brief

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POINTS RELIED ON

I

The appellate courts have jurisdiction of the appeal because Appellant is not attempting to appeal from the suspended imposition of sentence in that the denial of a motion to withdraw a guilty plea under Rule 29.07(d) is a separate civil order which becomes final and appealable independently of any sentence and judgment in the criminal case.

Brown v. State, SC83406 (February 13, 2002)

State ex rel. Reece v. Campbell, 551 S.W.2d 292 (Mo.App. 1977)

State v. Stephens, 71 Mo. 535 (1880)

Section 512.020, RSMo 2000

Rule 29.07(d)

Rule 24.035

ARGUMENT

I

The appellate courts have jurisdiction of the appeal because Appellant is not attempting to appeal from the suspended imposition of sentence in that the denial of a motion to withdraw a guilty plea under Rule 29.07(d) is a separate civil order which becomes final and appealable independently of any sentence and judgment in the criminal case.

In the Court of Appeals Respondent, in a one-page argument, maintained that Mr. Saffaf could not appeal because there was no final judgment.

(Respondent's brief 8)

In its substitute brief the State takes a new tack, claiming that a motion to withdraw a guilty plea is so "integrated" (Point Relied On I) and "so extensively intertwined" with the criminal proceeding "that there is a necessary linkage" (Resp. Sub. Br. 13) requiring it to be considered as part of the criminal case for purposes of appeal.

This Court recently reviewed the procedural history in Brown v. State, SC83406 (February 13, 2002), and exploded the State's argument. Rules 29.07(d) and 24.035, like their predecessors, are collateral civil actions governed by the rules of civil procedure so far as they are applicable, both at the trial and appellate levels, including the statute for civil appeals, sec. 512.020, RSMo 2000. (Slip op. 5-6.)

Though collateral to the criminal action, a Rule 29.07(d) motion, like a motion for post-conviction relief under Rule 24.035, is “not technically a continuation of that criminal action.” State ex rel. Reece v. Campbell, 551 S.W.2d 292, 296 (Mo.App. 1977). Therefore Respondent’s argument that a motion to withdraw should be treated like a motion for continuance or a motion for change of venue, i.e. as part of the criminal case, is incorrect (Resp. Sub. Br. 14).

This Court has recognized appeals on motions to withdraw guilty pleas in their own right since State v. Stephens, 71 Mo. 535 (1880). Brown shows that Rule 29.07(d), despite its now-diminished role, continues to be treated *in pari materia* with the newer rules on post-conviction relief. They are collateral, civil remedies that are separately appealable.

CONCLUSION

Wherefore appellant prays the Court to reverse the denial of his petition to set aside the guilty plea and remand to the trial court with directions to set aside the guilty plea and allow Appellant to plead anew, or with directions to hold an evidentiary hearing on the petition and make specific findings of fact and conclusions of law.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned counsel certifies that this brief complies with Rule 84.06(b); that it contains 740 words; and that it is accompanied by a disk which has been scanned for viruses and is virus-free.

Two copies of this brief, and a copy of the brief on disk, have been mailed to the Attorney General, attorney for Respondent, this 6th day of March, 2002.

HENRY B. ROBERTSON
Attorney for Appellant

