

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

August 24, 2009

Elisabeth A. Shumaker  
Clerk of Court

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK JUSTIN DENNY,

Defendant - Appellant.

No. 09-1241  
(D.C. No. 1:06-CR-00471-CMA-1)

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**ORDER**

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Before **BRISCOE, HARTZ** and **HOLMES**, Circuit Judges.

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The defendant, Mark Justin Denny, appeals from the district court's May 29, 2009, minute order that rendered 16 separate decisions. This court entered an order to show cause challenging its jurisdiction to consider the appeal. The defendant, his stand-by counsel, and the government each filed a response. After considering the responses, along with the applicable law, we conclude that we lack jurisdiction to consider this appeal at this time and dismiss it.

This court generally has jurisdiction to review only final decisions. 28 U.S.C. § 1291. A final decision is one that fully terminates all matters as to all parties and causes of action and leaves nothing for the district court to do but execute the judgment. U.S. v. Romero, 511 F.3d 1281, 1283 (10th Cir. 2008)

(citing Van Cauwenberghe v. Biard, 486 U.S. 517, 521 (1988)). Finality in a criminal case generally does not exist until the defendant has been both convicted and sentenced. U.S. v. Phelps, 17 F.3d 1334, 1336-37 & n.3 (10th Cir. 1994). Because the defendant has not been convicted or sentenced, no final judgment exists.

Furthermore, no exception to the final judgment rule is applicable in this case. U.S. v. Quaintance, 523 F.3d 1144, 1146 (10th Cir. 2008) (quoting Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (1978)) (stating that in order for the collateral order doctrine to be applied to an interlocutory order issued in a criminal case, “[1] the order must conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreveivable on appeal from a final judgment.”).

Interlocutory procedural orders such as those at issue in this case are not immediately appealable. Therefore, this appeal is DISMISSED.

The defendant’s stand-by counsel’s motion to withdraw is denied as moot.

Entered for the Court,  
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith  
Counsel to the Clerk