

UNITED STATES COURT OF APPEALS September 2, 2010

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DENAUD EGANA,

Defendant - Appellant.

No. 10-3222

(D.C. No. 2:09-CR-20133-JWL-JPO-16)

(D. Kansas)

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**ORDER**

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Before **KELLY, O'BRIEN**, and **TYMKOVICH**, Circuit Judges.

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Mr. Egana seeks to appeal from a magistrate judge's order denying his "Motion to Discharge and/or Terminate Appointed Counsel." We dismiss for lack of appellate jurisdiction.

Generally, the final judgment rule prohibits appellate review in a criminal case until after conviction and imposition of sentence. *Flanagan v. United States*, 465 U.S. 259, 263 (1984). "The rule of finality has particular force in criminal prosecutions because encouragement of delay is fatal to the vindication of the criminal law." *United States v. MacDonald*, 435 U.S. 850, 853-54 (1978) (internal quotation omitted). No exception to the finality rule is applicable here.

*See United States v. P. H. E., Inc.*, 965 F. 2d 848, 854 (10<sup>th</sup> Cir. 1992)

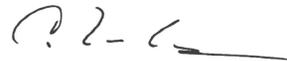
(interlocutory appeals in criminal cases have been allowed only in the narrow circumstance where “the substantive constitutional right at stake included the right to be free from the adverse effect of undergoing the trial itself.”) *See also United States v. Johnson*, 525 F. 3d 648 (8<sup>th</sup> Cir. 2008) (order denying appointment or substitution of counsel in the criminal context is not immediately appealable).

In addition, except for proceedings conducted by a magistrate judge upon designation by the district court judge and consent of the parties pursuant to 28 U.S.C. § 636 (c) in a civil matter, a court of appeals lacks jurisdiction to hear an appeal taken directly from a magistrate’s ruling. *See Colorado Building & Construction Trades Council v. B. B. Andersen Construction Co.*, 879 F. 2d 809 (10<sup>th</sup> Cir. 1989); *Phillips v. Beierwaltes*, 466 F. 3d 1217 (10<sup>th</sup> Cir. 2006).

**APPEAL DISMISSED.**

Entered for the Court  
ELISABETH SHUMAKER, Clerk of Court,

by:



Christine Van Coney  
Counsel to the Clerk