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2026 VT 53

No. 26-AP-072

State of Vermont — Supreme Court

v. — On Appeal from Superior Court, Lamoille Unit, Criminal Division

Kylie Dodds — September Term, 2026

Justin P. Jiron, J.

Matthew Dolezal, Deputy State's Attorney, Montpelier, for Plaintiff-Appellant.

Matthew Valerio, Defender General, and Rebecca Turner, Appellate Defender, Montpelier, for Defendant-Appellee.

PRESENT: Reiber, C.J., Eaton, Waples, Nolan and Drescher, JJ.

¶ 1. **NOLAN, J.** After granting defendant's motion to suppress evidence, the criminal division extended the State's appeal deadline by thirty days and then granted the State's motion for interlocutory appeal. Defendant moved to dismiss the appeal as untimely filed, arguing that the State failed to file within the statutorily prescribed seven-business-day appeal deadline. We agree. Under the controlling statute and appellate rule, the State must file its interlocutory appeal within seven business days, and this period cannot be extended using the rule that applies to appeals as of right. We therefore dismiss the appeal as untimely filed.

¶ 2. Defendant is charged with driving under the influence of alcohol, third offense—a felony—and driving with a suspended license. On December 18, 2025, the criminal division

granted defendant's motion to suppress her statements while in custody, the drug recognition evaluation report, the results of both of defendant's breath tests, her blood-test refusal, and her blood-test result.[1]

¶ 3. The next day, the State moved to extend by thirty calendar days the seven-business-day deadline to appeal the suppression decision. The State represented that it intended to file a motion to reconsider and argued that this constituted "good cause" for an extension of the appeal period under Vermont Rule of Appellate Procedure 4(d), which permits enlargements of up to thirty days upon a showing of "excusable neglect or good cause" for appeals taken as of right. The criminal division granted the request, and the State filed its motion to reconsider on December 30, 2025.

¶ 4. On January 29, 2026, the day of the new appeal deadline established by the criminal division, the State filed a "notice of appeal and § 7403(d) certification" with the criminal division, purporting to appeal the December 18, 2025 suppression order. Because the State filed a "notice"—not a "motion" for permission to appeal, as required by Vermont Rule of Appellate Procedure 5—the criminal division did not transmit the appeal to the Supreme Court or otherwise respond to the filing. On February 6, 2026, the State asked the criminal division to issue an order certifying its interlocutory appeal. Defendant opposed the request as untimely because the State appealed more than seven business days after the December 18 order. Reasoning that the State's ability to appeal a suppression order is effectively as of right, and therefore eligible for a filing deadline extension of up to thirty days under Rule 4(d), the trial court granted the State permission to appeal the order.

[1] The complexities of the suppression litigation are not detailed here because we conclude there was a jurisdictional defect in the State's filing and therefore do not reach the merits of the appeal.

¶ 5. After transmission to this Court, defendant moved to dismiss the appeal as filed out of time. We deferred ruling on the motion so that we could consider it with the merits of the suppression-order appeal. Defendant now renews her argument that the State's failure to request permission to appeal within seven business days is a jurisdictional barrier necessitating dismissal of the appeal. State v. Mason, 147 Vt. 647, 647, 518 A.2d 366, 366 (1986) (mem.). The State counters that the criminal division properly extended the State's filing deadline under Rule 4(d), after which it filed on time.[2] In the State's view, the extension provisions of Rule 4(d) are available for this interlocutory appeal because the criminal division "must" grant motions to take them when the State meets all certification requirements. V.R.A.P. 4(d) (providing for extension of time for appeals "as of right"); V.R.A.P. 5(b)(4)(A) (providing that court "must allow the State to take an appeal" if other requirements of rule are met).

¶ 6. A sketch of the separate frameworks for interlocutory and by-right appeals helps to contextualize the parties' positions. The State has no common-law right to appeal in criminal cases and thus any appeal "must thus be grounded in a statutory grant of such a right." State v. Roy, 2018 VT 67A, ¶ 12, 209 Vt. 133, 203 A.3d 1177. By statute, in felony cases, the State may appeal from a limited list of interlocutory orders, including those "granting a motion to suppress evidence." 13 V.S.A. § 7403(c)(1). To appeal, the State must certify "to the [superior] court" that the appeal is not taken for the purpose of delay, the evidence suppressed "is substantial proof" of a material fact, and the relief "is necessary to avoid seriously impeding" the proceeding. Id.

[2] Defendant disputes whether the State even properly complied with the extended deadline of January 29, 2026. Defendant argues that the State's January 29 filing did not conform with the governing statute, 13 V.S.A. § 7403(c), (d), and Rule 5 because it was styled as a notice of appeal, not a motion, and, as a result, the State did not appeal until February 6, 2026. See State v. Lewis, 151 Vt. 38, 40, 556 A.2d 59, 61 (1988) (concluding State timely filed "motion for permission to appeal" where original filing had missing word that was supplied in subsequent filing) (emphasis added)). Although this is an open question, we need not resolve it because we conclude that the criminal division should not have granted the extension.

§ 7403(d). The appeal must be taken "within seven business days after the decision." Id. § 7403(e). "The failure of the State to comply with the requirements of the statute gives rise to a jurisdictional defect." Mason, 147 Vt. at 647, 518 A.2d at 366.

¶ 7. Rule 5 echoes and implements the State's interlocutory appeal rights as set forth in § 7403(e). Like its statutory counterpart, Rule 5—entitled "Appeals Before Final Judgement"—establishes that the State must move the trial court for permission to appeal and make the statutorily required certifications "within 7 business days after the decision" appealed from. V.R.A.P. 5(b)(4), (5)(A) (describing process by which State may file "Motion for Permission To Appeal by the State in a Felony Criminal Action"). Rule 5 does not contain a provision for extension of time.

¶ 8. In contrast to interlocutory appeals, the Legislature explicitly designated defendants' appeals of final criminal judgments as appeals "as of right." 13 V.S.A. § 7401 (stating that "the defendant may appeal to the Supreme Court as of right all questions of law involved in any judgment of conviction" (emphasis added)). The analogue rule, Rule 4(d), titled "Appeal as of Right—When Taken," allows the superior court to extend for up to thirty days the time for filing the notice of appeal, provided the motion is "filed no later than 30 days after the expiration of the time prescribed by Rule 4(a)," and there is "excusable neglect or good cause." V.R.A.P. 4(d)(1)(A), (B).

¶ 9. Defendant contends that the criminal division erred by giving the State a Rule 4(d) filing extension in this Rule 5 interlocutory appeal. This is legal question we review de novo. State v. Therrien, 2011 VT 120, ¶ 9, 191 Vt. 24, 38 A.3d 1129 (explaining that "interpretation of a statute is a question of law that we review de novo"); State v. Amidon, 2008 VT 122, ¶ 16, 185 Vt. 1, 967 A.2d 1126 ("The interpretation of procedural rules is a question of law which we review de novo.").

¶ 10. In interpreting statutes, we "first look to the plain and ordinary meaning of the statutory language to divine" the legislative intent. Roy, 2018 VT 67A, ¶ 14. "If the statutory language is unambiguous, we enforce it according to its terms." Polak v. Ramirez-Diaz, 2025 VT 9, ¶ 12, 220 Vt. 564, 336 A.3d 383 (quotation omitted). Procedural rules are interpreted similarly to give effect to their plain language and the purpose they were designed to serve. State v. Villar, 2017 VT 109, ¶ 7, 206 Vt. 236, 180 A.3d 588.

¶ 11. We conclude that the State's seven-business-day deadline to seek an interlocutory appeal in a felony case may not be extended under Rule 4(d), which covers "Appeal[s] as of Right." This conclusion rests foremost on the plain language of § 7403, which directs the State to file its motion for permission to appeal a suppression order—together with the prescribed certifications—in the criminal division within seven business days. Adherence to this process is a jurisdictional prerequisite to taking an interlocutory appeal. Mason, 147 Vt. at 647, 518 A.2d at 366. Given these filing predicates, an interlocutory appeal is not properly characterized as an "as of right" appeal that is eligible for the Rule 4(d) filing extension.

¶ 12. Moreover, within the statute, the Legislature detailed the certifications the State must make to the trial court and the time frame in which it must file, but it provided no avenue to enlarge the seven-business-day filing window. This Court will not read that provision into the law because, in interpreting a statute, "we do not supply words which the legislature has omitted." Villar, 2017 VT 109, ¶ 7 (quotation omitted).

¶ 13. The appellate rules further confirm that the time for the State to bring an interlocutory appeal in a felony case under § 7403 may not be extended. Rule 5 mirrors the statute, describing the process to move for permission to file such appeals, including the preconditions the State must satisfy. V.R.A.P. 5(b)(4)-(5). Like the statute, it contains no provision for extending the seven-business-day deadline.

¶ 14. The State points to Rule 5's directive that the "superior court must" allow an appeal from a suppression order if the State provides the requisite certifications in urging us to treat this appeal as by right. But the State's expansive understanding of the meaning of the phrase "appeal by right" finds no support in the law.

¶ 15. An appeal by right generally refers to appeals from those orders that are final and conclusively determine the rights of the parties. See In re Burlington Bagel Bakery, Inc., 150 Vt. 20, 21, 549 A.2d 1044, 1045 (1988) ("To be final and appealable an order must end litigation on the merits or conclusively determine the rights of the parties, leaving nothing for the court to do but execute the judgment." (quotation omitted)). In contrast, interlocutory orders—which are, by definition, issued before final judgment—require permission for appellate review and "are typically not subject to immediate appeal." Polak, 2025 VT 9, ¶ 13.

¶ 16. Moreover, the statutory language forecloses the State's argument that interlocutory appeals are taken by "right." Although § 7403 affords a pathway to appeal a suppression order, it does not designate those appeals as taken by "right." On the contrary, it allows the State to pursue appeal only if it makes certain representations to the criminal division. And Rule 5—through its title "Appeals Before Final Judgment" and its directive that the State make a "Motion for Permission To Appeal . . . in a Felony Criminal Action"—puts an even finer point on the permissive nature of interlocutory appeals. V.R.A.P. 5(b)(4) (emphasis added). In clear contrast, § 7401, concerning a defendant's right to appeal a final judgment of conviction, expressly identifies those appeals "as of right." 13 V.S.A. § 7401 (stating that "the defendant may appeal to the Supreme Court as of right all questions of law involved in any judgment of conviction" (emphasis added)).

¶ 17. We conclude that the Legislature "chose its words advisedly" when it did not categorize appeals by the State under § 7403 as by right, and we will not second-guess its decision.

Roy, 2018 VT 67A, ¶ 15 (quotation omitted). The extension available under Rule 4 for appeals taken by right does not apply to interlocutory appeals like this one. Appeals before judgment in felony criminal cases must be taken within seven business days. The State filed its appeal well beyond that deadline here. Therefore, the appeal is untimely, and we lack jurisdiction to hear it. Mason, 147 Vt. at 647, 518 A.2d at 366.

Appeal dismissed.

FOR THE COURT:

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Associate Justice