

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

STRAFFORD, SS.

JULY TERM, 2024

State of New Hampshire

v.

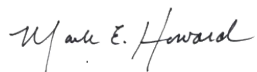
Timothy Verrill
219-2017-CR-00072

STATE'S MOTION TO RECONSIDER

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General, and respectfully submits this motion for the Court to reconsider its ruling on the defendant's ex parte motion for services other than counsel, because the New Hampshire Supreme Court has accepted the case and has jurisdiction over the matter. In further support thereof, the State submits the following:

1. On April 10, 2024, after a multi-week jury trial, the defendant was convicted of two counts of reckless second-degree murder and five counts of falsifying physical evidence in the above-captioned matter. The defendant was sentenced on May 17, 2024.
2. The defendant, through his trial counsel, Julia M. Nye, Esq., and Matthew McNicoll, Esq., filed a timely notice of appeal to the New Hampshire Supreme Court.
3. The New Hampshire Supreme Court docketed the defendant's appeal. Case No. 2024-0337. Attached to the present motion is a copy of the Supreme Court's Notice of Docketing and Mandatory E-Filing, issued on July 2, 2024. To date, the defense has not sought to stay that appeal and remand the case to this Court.

Motion to Reconsider Denied. The court understood the motion and the related ex parte filings to concern expert services that were utilized prior to trial and in preparation for trial. If the court's understanding is incorrect and that the requested services were for post-trial investigation, the defense is ordered to so inform the court within 5 days to allow the court to reconsider the State's motion.


Honorable Mark E. Howard
July 22, 2024

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Clerk's Notice of Decision
Document Sent to Parties
on 07/22/2024

4. By ex parte motion filed on July 8, 2024, trial counsel sought an Order from this Court seeking funds for forensic services, apparently in support of a possible future motion for a new trial before this Court.¹ This Court granted the defense motion that same day, and sent notice of such to both counsel and the State.

5. The State asks the Court to reconsider its ruling. See N.H. R. Crim. Pro. 43. The applicable “point[] of . . . fact” that the Court has overlooked—through absolutely no fault of the Court—is that the Supreme Court now has jurisdiction over this matter.

As a general rule the perfection of an appeal divests the Trial Court of jurisdiction of the cause and transfers it to the appellate court.

An appeal to this Court from a nisi prius court does not necessarily stay all further proceedings in the trial court, nor does it strip said court of all power over the proceeding in which the appeal has been taken. The trial court may act with reference to matters not relating to the subject matter of, or affecting, the proceedings; make such orders and decrees as may be necessary for the protection and preservation of the subject matter of the appeal; and it may do anything that may be necessary for the presentation of the case in this Court, or in furtherance of the appeal. But, when an appeal is taken, it does affect the operation or execution of the order, judgment or decree from which the appeal is taken, and any matters embraced therein. After the appeal has been perfected, this Court is vested with the exclusive power and jurisdiction over the subject matter of the proceedings, and the authority and control of the lower court with reference thereto are suspended.

The general rule stated above does not prohibit the Trial Court from passing on collateral, subsidiary or independent matters affecting the case and the Trial Court has adequate authority and jurisdiction to preserve the status quo. The defendants are correct in their contention that the Trial Court is not in a position to act on the motion for a new trial unless the case is remanded for that purpose.

¹ The State discerns no valid basis for the ex parte nature of the defense pleading at issue; nor does the grounds set forth in that motion—grounded on the defendant’s trial rights—apply in the procedural posture of this matter. Had the State been provided with proper notice, it would have reminded filing counsel of the Supreme Court’s docketing of the matter.

Rautenberg v. Munnis, 107 N.H. 446, 447-48 (1966) (internal quotation marks and citations omitted; emphasis added). Defense counsel has not even attempted to articulate why this general rule should not apply to its ex parte pleading.

6. For these reason, the Court should reconsider its ruling and dismiss the defendant's ex parte motion without prejudice, with leave to resubmit should the defense decide to stay the present appeal and continue proceedings before the Superior Court.

WHEREFORE the State of New Hampshire respectfully requests that this Honorable Court:

- A. Reconsider its July 8, 2024 Order on the defendant's ex parte motion for services other than counsel and dismiss said motion without prejudice, with leave to resubmit should the case be remanded back to this Court's jurisdiction; and
- B. Grant such other and further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

John M. Formella
Attorney General



Peter Hinckley, NH Bar ID #18708
Senior Assistant Attorney General

July 9, 2024



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CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing was provided to Julia M. Nye, Esq., and Matthew McNicoll, Esq.



Peter Hinckley

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2024-0337, State of New Hampshire v. Timothy R. Verrill, the clerk of court on July 1, 2024, issued the following order:

Notice of Docketing and Mandatory E-Filing

On June 13, 2024, the defendant filed a notice of appeal, which has been docketed in this court as case number 2024-0337. This case is governed by the Supplemental Rules of the Supreme Court of New Hampshire for Electronic Filing. These Supplemental Rules, along with the generally applicable Rules of the Supreme Court of New Hampshire, are available on the New Hampshire Judicial Branch website: <https://www.courts.nh.gov/resources/court-rules>.

The Supplemental Rules require that attorneys, self-represented parties, and nonlawyer representatives submit all documents to the court through the court's electronic filing (e-filing) system, with the exception of certain documents listed in Supplemental Rule 6. Accordingly, each attorney, self-represented party, and nonlawyer representative who intends to participate in this case or to remain on the service and distribution list must register as an e-filer with the Supreme Court e-filing system, unless an exemption is provided to or requested by that person under Supplemental Rule 5.

The address for the Supreme Court e-filing system is <https://ctefile.nhecourt.us/login>. The e-filing system is also accessible through the Electronic Services page of the New Hampshire Judicial Branch website: <https://www.courts.nh.gov/resources/electronic-services/supreme-court/attorneys-self-represented-parties-and-other-non>. Prior to registering with the e-filing system, attorneys should review the Quick Guide – Registering as an Attorney E-Filer; self-represented parties and nonlawyer representatives should review the Quick Guide – Registering as a Nonlawyer E-Filer. The Quick Guides are available on the Electronic Services page.

Each attorney, self-represented party, and nonlawyer representative who is not already registered with the Supreme Court e-filing system must register and electronically file an appearance on or before July 11, 2024. It appears that all persons on the distribution list of this order have already registered. Registration as an e-filer is mandatory for those who intend to participate in this case or to remain on the service and distribution list. After successfully registering, e-filers will receive through the e-filing system orders and notices issued by the court and filings submitted by other registered e-filers.

See Supplemental Rule 18(c)(1) and (e). In particular, when a registered e-filer submits a document to the court through the e-filing system, and one or more other parties to the case or their representatives have registered as e-filers, the filing party must cause electronic service through the e-filing system to be made on each other registered e-filer by so designating at the time of the filing party's submission; no other form of delivery to a registered e-filer by a registered e-filer is permitted as valid service.

Persons electronically filing a document with the court are not required to submit copies. They must, however, conventionally serve the document by mailing or delivering a paper copy to any party in the case who has not yet registered as an e-filer or who has requested an exemption from the requirement of e-filing. See Supplemental Rule 18(c)(2) and (3).

Any party who is not required to file electronically in the case, or who has requested an exemption from the e-filing requirement, must submit his or her filings to the court conventionally (in paper) and mail or deliver a paper copy of the filings to all other parties. See Supplemental Rule 18(c)(2) and (3).

The court will conventionally send orders and notices to the mailing address of any party who is not required to file electronically or who has requested an exemption from the requirement of e-filing. See Supplemental Rule 18(e); see also Rule 26(9).

This order is entered pursuant to Rule 21(8).

**Timothy A. Gudas,
Clerk**

Distribution:
Strafford County Superior Court, 219-2017-CR-00072
Matthew T. McNicoll, Esq.
Julia M. Nye, Esq.
Peter R. Hinckley, Esq.
Attorney General
File