

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

KA08-165

STATE OF LOUISIANA

VERSUS

JOSE V. BARBARENA

**APPEAL FROM THE
FOURTEENTH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU, NO. 5168-96
HONORABLE WILFORD D. CARTER, DISTRICT JUDGE**

**JIMMIE C. PETERS
JUDGE**

Court composed of John D. Saunders, Jimmie C. Peters and Michael G. Sullivan, Judges.

**APPEAL DISMISSED. PLAINTIFF-APPELLANT IS PERMITTED
TO FILE AN APPLICATION FOR SUPERVISORY WRITS WITHIN
THIRTY DAYS FROM THE DATE OF THIS DECISION.**

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Jose V. Barberena**

Peters, Judge.

On November 6, 1996, Defendant, Jose V. Barberena, pled guilty to possession of marijuana with intent to distribute, a violation of La.R.S. 40:966A(1). Pursuant to the plea agreement, the Defendant was sentenced to five years at hard labor, suspended, and placed on five years of supervised probation subject to the conditions set forth in La.Code Crim.P. art. 895, and subject to special conditions, including but not limited to, six months in the parish jail. The trial court granted the Defendant's request for his probation to be supervised in Texas.

On October 17, 2007, the Defendant filed in the trial court a "Motion to Withdraw Guilty Plea." On October 19, 2007, the district court judge granted the motion without conducting a hearing. Following, on November 19, 2007, the State filed a "Motion and Order for Appeal" which was granted by trial court. On February 13, 2008, the appellate record was lodged in this court.

On February 15, 2008, this court issued a rule to show cause why the appeal in this case should not be dismissed as the judgment at issue is not appealable. In response to the rule to show cause, the State filed a response asserting it was an appealable issue or, in the alternative, requesting sufficient time to prepare a writ application.

The correct procedural mechanism for seeking review of the trial court's granting of motion to withdraw a guilty plea is an application for supervisory writs, not an appeal, as the granting of a motion to withdraw a guilty plea is not a final judgment. *See* La.Code Crim.P. art. 912, *State v. Morris*, 98-2684 (La.App. 4 Cir. 3/10/99), 729 So.2d 1141, and *State v. Picchini*, 508 So.2d 149 (La.App. 4 Cir. 1987). *See also*, *State v. Lewis*, 482 So.2d 659 (La.App. 1 Cir. 1985), *writ denied*, 487 So.2d 437 (La. 5/1/86). *Cf. State v. White*, 21 So.2d 877 (La.1945).

Because this judgment is not appealable, the appeal in this case is hereby dismissed. However, the Plaintiff-Appellant, the State of Louisiana, is hereby permitted to file a proper application for supervisory writs, in compliance with Uniform Rules—Courts of Appeal, Rule 4, no later than thirty days from the date of this decision. The State is not required to file a notice of intent to seek writs nor obtain an order setting a return date pursuant to Uniform Rules—Courts of Appeal, Rule 4-3 as we hereby construe the motion for appeal as a notice of intent to seek a supervisory writ.

APPEAL DISMISSED. PLAINTIFF-APPELLANT IS PERMITTED TO FILE AN APPLICATION FOR SUPERVISORY WRITS WITHIN THIRTY DAYS FROM THE DATE OF THIS DECISION.