

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL, THIRD CIRCUIT

11-685

STATE OF LOUISIANA

VERSUS

FRANK L. RAMBIN

**APPEAL FROM THE
ALEXANDRIA CITY COURT
PARISH OF RAPIDES, NO. 11-2179
HONORABLE RICHARD ERIC STARLING, JR., JUDGE**

**JOHN D. SAUNDERS
JUDGE**

Court composed of Ulysses G. Thibodeaux, Chief Judge, Sylvia R. Cooks, and John D. Saunders, Judges.

**APPEAL DISMISSED. DEFENDANT-APPELLANT
IS PERMITTED TO FILE AN APPLICATION FOR
SUPERVISORY REVIEW WITH THIS COURT
WITHIN THIRTY DAYS OF THE DATE OF THIS
DECISION.**

**Hon. Brian Davis Mosley
City of Alexandria Prosecutors
515 Washington Street
Alexandria, LA 70301
COUNSEL FOR APPELLEE:
City of Alexandria**

**Frank L. Rambin, Pro Se
2110 Marye Street
Alexandria, LA 71301**

Saunders, Judge.

On January 14, 2011, Defendant, Frank L. Rabin, was cited in Alexandria for speeding, in violation of La.R.S. 32:63. Defendant appeared for trial on the offense on March 24, 2011. After considering the evidence presented, the city court found Defendant guilty as charged, fined him fifty dollars, ordered him to pay \$120.00 in court costs, and directed Defendant to serve five days in jail if he defaulted on the fine and court costs. The record shows that Defendant promptly paid both the fine and the court costs.

Thereafter, Defendant filed a pro se "Motion and Order for Appeal" with the city court; as a result, the trial court set a June 17, 2011, return date. Subsequently, the record in the case was lodged with this court on June 3, 2011. Upon receiving Defendant's record, this court issued an order directing Defendant to submit a brief by June 28, 2011, showing cause why the appeal should not be dismissed as the judgment was not appealable. This court has received no such brief.

Under La.Code Crim.P. art. 912.1(B), defendants in criminal cases may only appeal their convictions when their cases are triable by jury. Defendants charged with misdemeanors are to be tried without a jury unless the punishment includes a fine over \$1,000.00 or a term of imprisonment more than six months. La.Code Crim.P. art. 779. The penalty for a first offense is a fine up to one hundred seventy-five dollars and/or imprisonment for up to thirty days, while that for second and subsequent offenses is a fine up to five hundred dollars and/or imprisonment for not more than ninety days. La.R.S. 32:61 et seq.; La.R.S. 32:57. Therefore, because the potential penalty for speeding does not meet the criteria that would make the offense eligible for a jury trial, Defendant's speeding conviction and sentence are not appealable judgments. Therefore, the appeal in this case is hereby dismissed.

Though his conviction and sentence are not appealable, Defendant has the right to seek judicial review of those judgments by timely filing an application for supervisory review with this court. La.Code Crim.P. art. 912.1(C). Defendant is hereby permitted to file an 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 “application shall be accompanied by a complete record of all evidence upon which the judgment is based” La.Code Crim.P. art. 912.1. Defendant 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, Rule 4-3 as we hereby construe the motion for appeal as a notice of intent to seek a supervisory writ.

APPEAL DISMISSED. DEFENDANT-APPELLANT IS PERMITTED TO FILE AN APPLICATION FOR SUPERVISORY REVIEW WITH THIS COURT WITHIN THIRTY DAYS OF THE DATE OF THIS DECISION.