

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2001-KA-00886-COA**

**MARCUS ROBERSON**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

DATE OF TRIAL COURT JUDGMENT:	4/27/2001
TRIAL JUDGE:	HON. ELZY JONATHAN SMITH, JR.
COURT FROM WHICH APPEALED:	COAHOMA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DARNELL FELTON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY:	LAURENCE Y. MELLEN
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	DENIED DEFENDANT'S MOTION TO DISMISS INDICTMENT
DISPOSITION:	APPEAL DISMISSED-12/17/2002
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	

**BEFORE THOMAS, P.J., IRVING AND MYERS, JJ.**

**MYERS, J., FOR THE COURT:**

¶1. Marcus Roberson has been tried twice for double murder. Both trials ended in mistrials. Roberson then filed a motion to dismiss his indictment, claiming double jeopardy had attached. The trial court denied the motion, and Roberson filed a motion for reconsideration. Again, the trial court denied the motion. Roberson now appeals. Although he cites four issues for our review, we can succinctly state all issues as one:

1. WHETHER A MISTRIAL BECAUSE OF THE PROSECUTOR'S DISCOVERY VIOLATIONS SHOULD INVOKE DOUBLE JEOPARDY UNDER ARTICLE 3, SECTION 22 OF THE MISSISSIPPI CONSTITUTION?

STATEMENT OF THE FACTS

¶2. A Coahoma County grand jury indicted Roberson on two counts of murder on May 31, 2000. On June 8, Roberson filed a motion for discovery requesting, inter alia, names, addresses, and phone numbers of all persons the prosecution might call as witnesses or had interviewed and the substance of their testimony or statement. Roberson went to trial on November 13. A hung jury resulted in the trial judge declaring a mistrial.

¶3. At his next trial, in March 2001, the judge again declared a mistrial. This time, the mistrial was based on the prosecution's discovery violations. The prosecutor failed to give requested discovery concerning the anticipated testimony of a witness, Floyd Williams, Jr.

¶4. Approximately two weeks after the granting of the mistrial, Roberson filed a motion to dismiss the indictment for a double jeopardy violation. The trial judge made findings of fact and conclusions of law denying Roberson's motion. When the trial judge also denied a motion to reconsider the motion to dismiss the indictment, Roberson appealed to this Court.

LEGAL ANALYSIS

¶5. We have no need to reach the merits of this case. This Court lacks jurisdiction to consider appeals of interlocutory court orders unless permission has been obtained for such an appeal under Mississippi Rule of Appellate Procedure 5. *Stringer v. American Bankers Ins. Co. of Florida*, 822 So. 2d 1011, 1015 (¶13) (Miss. Ct. App. 2002) (citing M.R.A.P. 5; *American Elec. v. Singarayar*, 530 So.2d 1319, 1322 (Miss.1988)). We cannot hear this case and therefore dismiss.

**¶6. THIS APPEAL OF THE CIRCUIT COURT OF COAHOMA COUNTY DENYING THE APPELLANT'S MOTION TO DISMISS INDICTMENT IS DISMISSED FOR LACK OF JURISDICTION. ALL COSTS OF THIS APPEAL ARE ASSESSED TO COAHOMA COUNTY.**

**McMILLIN, C.J., KING AND SOUTHWICK, P.JJ., BRIDGES, THOMAS, LEE, IRVING, CHANDLER AND BRANTLEY, JJ., CONCUR.**