

March 7, 2011

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GWEN BERGMAN,

Defendant - Appellant.

No. 11-1044

(D.C. No. 1:04-CR-00180-WDM-1)

ORDER

Before **HARTZ, O'BRIEN** and **HOLMES**, Circuit Judges.

This court lacks jurisdiction over this interlocutory appeal because the orders being appealed are not final or otherwise immediately appealable. *See* 28 U.S.C. § 1291.

The defendant appeals an order of the district court denying without prejudice her pro se motions. No final judgment has been entered. In fact, according to the district court docket and the courtroom minutes, the district court has not decided the issue of competency, a preliminary matter under this court's remand in *United States v. Bergman*, 599 F.3d 1142 (10th Cir. 2010).

Generally, the final judgment rule prohibits appellate review in a criminal case until after conviction and imposition of sentence. *Flanagan v. United States*,

465 U.S. 259, 263 (1984). “The rule of finality has particular force in criminal prosecutions because encouragement of delay is fatal to the vindication of the criminal law.” *United States v. MacDonald*, 435 U.S. 850, 853-54 (1978) (internal quotation omitted). *See also United States v. P.H.E.*, 965, 854 (10th Cir. 1992) (interlocutory appeals in criminal cases have been allowed only in the narrow circumstance where “the substantive constitutional right at stake included the right to be free from the adverse effect of undergoing the trial itself.”). No exception to the general rule is present here.

Accordingly, this appeal is **DISMISSED**.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Ellen Rich Reiter".

Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney