

IN THE COURT OF APPEALS OF IOWA

No. 0-947 / 10-0298
Filed January 20, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN FRANCIS HOLTSINGER,
Defendant-Appellant.

Appeal from the Iowa District Court for Marion County, Terry L. Wilson,
District Associate Judge.

After being acquitted of an OWI charge following the return of a jury's
verdict of not guilty, John Holtsinger appeals the district court's pretrial ruling
denying his motion to suppress a chemical breath test. **APPEAL DISMISSED.**

Steven Gardner of Kiple, Deneffe, Beaver, Gardner & Zingg, L.L.P.,
Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, Terry E. Rachels, County Attorney, and Marc R. Wallace,
Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Tabor, J.,
takes no part.

DOYLE, J.

John Holtsinger was charged with OWI, third offense, in violation of Iowa Code section 321J.2 (2007). He filed a motion to suppress the results of the chemical breath test obtained at the police department after his September 9, 2008 arrest. Following a hearing, the district court denied Holtsinger's motion. Holtsinger did not seek discretionary review of that ruling.

A jury trial was held on August 20, 2009, resulting in a mistrial. A second trial was held on January 27, 2010, and the jury returned a not guilty verdict, acquitting Holtsinger of the OWI charge.

On February 12, 2010, Holtsinger filed a notice of appeal, challenging the district court's denial of his motion to suppress. He argues the motion to suppress ruling is not moot and is reviewable in light of Iowa Code section 321J.13(6)(b) and (c), and the Iowa Supreme Court's ruling in *State v. Taeger*, 781 N.W.2d 560, 566-67 (Iowa 2010). However, the State argues, among other things, that Holtsinger's claim is not properly before this court for jurisdictional reasons. We agree.¹

"'Appeal' is the right of both the defendant and the state to have specified actions of the district court considered by an appellate court." Iowa Code § 814.1(1). "In Iowa the right of appeal is statutory and not constitutional." *State v. Hinners*, 471 N.W.2d 841, 843 (Iowa 1991) (citations omitted). Iowa Code section 814.6(1)(a) specifically provides that a defendant is granted the right of

¹ Although *Taeger* may support Holtsinger's mootness argument, it does not solve the jurisdictional problem we face here. *Taeger's* appeal from an order granting the State's motion to dismiss, with no adjudication of *Taeger's* pending motion to suppress, was taken by the supreme court on discretionary review, not on appeal. See *Taeger*, 781 N.W.2d at 562-64.

appeal from “[a] *final judgment of sentence*, except in case of simple misdemeanor and ordinance violation convictions.” (Emphasis added.)

Black’s Law Dictionary defines “sentence” as “[t]he judgment that a court formally pronounces *after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer.*” Black’s Law Dictionary 1367 (7th ed. 1999) (emphasis added). “A sentence is a final judgment in a criminal case, and, excepting statutory provisions, is the end of the case in regard to control of the sentencing court.” *State v. Sullivan*, 326 N.W.2d 361, 363 (Iowa 1982); *see also State v. Coughlin*, 200 N.W.2d 525, 526 (Iowa 1972) (“Final judgment in a criminal case means sentence.”). Conversely, an acquittal is “[t]he legal certification, [usually] by jury verdict, that an accused person *is not guilty* of the charged offense.” Black’s Law Dictionary 25 (7th ed. 1999) (emphasis added). An acquittal has been defined “as an order that ‘actually represents a resolution *correct or not*, of some or all of the factual elements of the offense charged.’” *State v. Kramer*, 760 N.W.2d 190, 195 (Iowa 2009) (quoting *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571, 97 S. Ct. 1349, 1354, 51 L. Ed. 2d 642, 651 (1977)) (emphasis added in *Kramer*). Thus, an acquittal is clearly not a final judgment of *sentence*.

Because Holtsinger was acquitted of his criminal OWI charge, he did not receive a “final judgment of sentence.” Consequently, pursuant to section 814.6(1)(a), we have no jurisdiction to entertain his appeal. We accordingly dismiss his appeal.

APPEAL DISMISSED.