

[TRIAL COURT CAPTION]

MOTION TO CERTIFY ORDER FOR INTERLOCUTORY APPEAL

The Defendant, by counsel, respectfully requests this Court certify the Order denying the Defendant's [insert specific Motion denied] for interlocutory appeal, pursuant to App. R. 14(B). In support of this Motion, the Defendant would show the Court as follows:

1. On [insert date], the State of Indiana initiated this cause by filing an Information charged the Defendant with [insert offense(s)].
2. On [insert date], the Defendant filed [insert Motion upon which the request to certify is based].
3. On [insert date], the trial court held an evidentiary hearing, and memorandum were submitted on [insert date].
4. On [insert date], the trial court denied the Appellant's [insert Motion].
5. The Defendant seeks that the Order entered on [insert date], denying his [insert specific Motion denied], be certified for interlocutory appeal.
6. The concise issues to be addressed in the interlocutory appeal would include whether the trial court erred in the following: [insert specific issues].
7. An interlocutory appeal on the issue should be granted, as [PICK ONE OR MORE: (1) the issue involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case; (2) the Defendant will suffer substantial expense, damage, or injury if the order is erroneous and the determination of the error is withheld until after judgment; and (3) the remedy by appeal is otherwise inadequate].

[Insert specific facts of the issue and the persuasive reasoning of why the issue should be certified, such as whether the issue is of first impression in Indiana, whether a disposition of the issue would assist the Defendant and the State of Indiana in its case or dispose of the case, and the important public policy involved with the issue].

8. A jury trial in this cause would take at least [insert duration] to litigate, and substantial judicial time and economy may be saved by an early disposition of these unique issues of first impression in Indiana.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court certify its Orders of [insert dates] for purposes of Interlocutory Appeal, and for all other relief just and proper in the premises.

(Signature)

REFERENCES

CASEBANK G.1.b.1

Indiana Rule of Appellate Procedure 14 (setting forth the procedure for initiating an interlocutory appeal and the criteria for certification and acceptance; the Request for Certification must be filed within thirty (30) days of the denial of the Order being appealed; a belated Request for Certification can be filed if good cause is shown).

Indiana Rule of Appellate Procedure 14(B)(2) (a Request for Acceptance of the Interlocutory Appeal must be filed with the Court of Appeals within thirty (30) days of the trial court's certification of the Order).

Indiana Rule of Appellate Procedure 14(B)(3) (requiring that the Notice of Appeal to be filed within fifteen days after the acceptance of jurisdiction by the Court of Appeals).

CASE LAW

Dingman v. State, 602 N.E.2d 184 (Ind.Ct.App. 1992) (although denial of a motion to suppress may be proper subject for interlocutory appeal if properly certified by the trial court and accepted by the reviewing court, there is no provision in the appellate rules for trial courts themselves to certify questions of law to the appellate courts).

Harrell v. State, 614 N.E.2d 959 (Ind.Ct.App. 1993) (despite acknowledging that delay occasioned by interlocutory appeal increases delay of speedy trial, the appellate court accepted interlocutory appeal of speedy trial claim; the Defendant showed that delay prior to trial was extraordinarily long, the State was not reasonably diligent in bringing the Defendant to trial, the Defendant asserted his right to speedy trial and the defense was demonstrably prejudiced by delay). See also Paul v. State, 799 N.E.2d 1194 (Ind.Ct.App. 2003).

Pelley v. State, 901 N.E.2d 494 (Ind. 2009) (criminal Rule 4(c) period does not include the time for State's interlocutory appeal when trial court proceedings have been stayed; however, trial court and Court of Appeals have discretion to deny a motion to stay if it appears that the State is seeking a stay for improper purposes, or if the appeal presents issues that are not critical to the case; State should alert the appellate court when it pursues an interlocutory appeal not chargeable to the defendant so the appellate court can be sensitive to the defendant's interest in avoiding delay).

Martakis v. State, 450 N.E.2d 128 (Ind.Ct.App. 1983) (interlocutory appeal is available to challenge a denial of motion to dismiss on double jeopardy grounds).

Mahrtdt v. State, 629 N.E.2d 244 (Ind.Ct.App. 1994) (interlocutory appeal holding appellant was prejudiced by the State's failure to comply with a discovery order; suppression of evidence warranted).

Hill v. State, 592 N.E.2d 1229 (Ind. 1992) (although Art. 1, §§ 16 and 17 of the Indiana Constitution provides that Defendants have a constitutional right to be let to bail that is not excessive and the denial of bail was erroneous; the issue should have been raised through interlocutory appeal, and was moot after trial).

Soward v. State, 606 N.E.2d 885 (Ind.Ct.App. 1993) (interlocutory appeal of juvenile waiver decision allowed, although not mandatory).

State v. Owings, 600 N.E.2d 568 (Ind.Ct.App. 1992), *aff'd by*, 622 N.E.2d 948 (because the trial court's suppression of an unavailable witness' statement effectively undercut the State's case, the State was

permitted to take an interlocutory appeal of the ruling; the State may appeal from an order granting motion to suppress evidence, if the order effectively terminates further prosecution. I.C. § 35-38-4-2.).

Green v. State, 469 N.E.2d 1169 (Ind. 1984) (motions in limine are not appealable on interlocutory or direct appeal).