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**Jul 01 2022**

**SC Court of Appeals**

## The Supreme Court of South Carolina

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July 01, 2022

The Honorable Julie J. Armstrong  
100 Broad St Ste 106  
Charleston SC 29401-2210

### **REMITTITUR**

Re: Allen Livingston v. Harold Simmons  
Lower Court Case No. 2014CP1001635  
Appellate Case No. 2021-001234

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

CHIEF DEPUTY CLERK

cc: Harold Simmons, Jr.  
Mr. Allen Livingston  
The Honorable Jenny Abbott Kitchings

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Allen Livingston, Respondent,

v.

Harold Simmons, Petitioner.

Appellate Case No. 2021-001234

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**ON WRIT OF CERTIORARI**

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Appeal From Charleston County  
The Honorable Mikell R. Scarborough, Circuit Court  
Judge

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Memorandum Opinion No. 2022-MO-008  
Submitted May 18, 2022 – Filed June 15, 2022

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**REVERSED AND REMANDED**

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Harold Simmons, *pro se*, of North Charleston, Petitioner.

Allen Livingston, *pro se*, of Ravenel, Respondent.

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**PER CURIAM:** Petitioner seeks a writ of certiorari from the dismissal of his appeal by the court of appeals on the ground that his notice of appeal was not timely served. It appears Petitioner sought to appeal the foreclosure order and the denial of his motion to alter or amend the judgment. The time for serving the notice of appeal was stayed by the motion to alter or amend the judgment. *See* Rule 203(b)(1), SCACR (providing that a motion to alter or amend the judgment under Rule 52 or Rule 59, SCRCP, stays the time for appeal, which runs from receipt of written notice of entry of the order granting or denying the motion). Because the order denying the motion to alter or amend the judgment was received by counsel for Petitioner on May 2, 2016, the notice of appeal served on May 30, 2016 was timely. *See id.* (requiring a notice of appeal to be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment). Accordingly, we grant the petition for a writ of certiorari, dispense with further briefing, reverse the order of the court of appeals, and remand this matter for consideration of Petitioner's appeal on the merits.

**REVERSED AND REMANDED.**

**BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.**

# The South Carolina Court of Appeals

Allen Livingston, Respondent,

v.

Harold Simmons, Appellant.

Appellate Case No. 2016-001201

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## ORDER

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Appellant received written notice of entry of the order on appeal on April 27, 2016. Appellant served the notice of appeal on May 30, 2016. Pursuant to Rule 203(b)(1), SCACR, the notice of appeal must have been "served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Because Appellant failed to timely serve Respondent with the notice of appeal, this appeal is dismissed. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). The remittitur will be sent as required by Rule 221(b), SCACR.



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FOR THE COURT

Columbia, South Carolina

cc:

Harold Simmons, Jr.

Bruce Alan Berlinsky, Esquire

**FILED**  
**Aug 04 2021**

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