

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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NOV 15 2022

On Petition for Writ of Certiorari to Pickens County
The Honorable Perry H. Gravely, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2022-000972

ROBERT E. DILLARD,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

MOTIONS TO DISMISS, MOTION TO COMPEL, AND MOTION TO STRIKE

The State (“Respondent”) hereby moves before this Court to dismiss the appeal or, in the alternative, to compel Robert E. Dillard (“Petitioner”) to serve and file an initial brief and designation of matter, and to strike a filing made by Petitioner. In support of this motion, the undersigned would show as follows.

Petitioner’s failure to serve the notice of appeal

1. Petitioner filed his notice of appeal with this Court on July 13, 2022. The proof of service indicates that Petitioner served his notice of appeal on Respondent by mail on July 11, 2022, by sending a copy thereof to Thirteenth Circuit Solicitor William Walter Wilkins, III, and South Carolina Attorney General Alan McCrory Wilson.
2. “A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule 203(b)(1),

SCACR.

3. “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.” *Elam v. South Carolina Dep’t of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).
4. To the best of the undersigned’s knowledge, neither the Thirteenth Circuit Solicitor’s Office nor the South Carolina Attorney General’s Office ever received a copy of the notice of appeal, or the order being appealed, from Petitioner. The undersigned verified this allegation by contacting the Thirteenth Circuit Solicitor’s Office.
5. Respondent had no knowledge of the pending appeal until it received this Court’s letter dated July 19, 2022.
6. Petitioner’s failure to serve the notice of appeal on Respondent is an adequate basis for this Court to dismiss the appeal, and this Court should grant Respondent’s motion to dismiss.

Petitioner’s failure to file a designation of matter

7. On October 5, 2022, this Court sent a letter to Petitioner instructing him that he was required to serve and file his initial brief and designation of matter within thirty days.
8. On October 17, 2022, Petitioner filed with this Court multiple documents, which were titled as follows: (1) “MOTION FOR TO FILE APPELLANT’S initial brief and designation”; (2) “PROOF OF SERVICE”; and (3) “PETITION FOR WRIT

CERTIORARI, MOTION FOR A EVIDENTIARY HEARING ON FALSE IMPRISONMENT ON AN ARREST FAILURE TO INSTRUCT JURY ON DEFINITION OF REASONABLE DOUBT, AND FALSE INDICTMENT BY THE SOLICITOR. SEE EXHIBITS FACTS AND RECORDS.”

9. Petitioner has not served or filed an initial brief or a designation of matter but has served and filed only what appears to be a petition for a writ of certiorari.
10. “Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal” Rule 208(a)(4), SCACR.
11. This Court has the authority to dismiss an appeal whenever a petitioner fails to comply with the requirements of the Appellate Court Rules. Rule 260(a), SCACR.
12. The Appellate Court Rules “are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).
13. Due to Petitioner’s failure to serve and file an initial brief and designation of matter, Respondent moves to dismiss the appeal. In the alternative, should the Court deny the motion to dismiss, Respondent moves to compel Petitioner to serve and file an initial brief and designation of matter.

Petitioner’s extraneous filing

14. Also on July 13, 2022, Petitioner filed a document titled “EXPLANATION OF APPEAL PURSUANT TO RULE 18.5.” Respondent is not aware of any rule

requiring or authorizing Petitioner to file such a document, and the document does not appear to conform to the Appellate Court Rules concerning the documents that Petitioner is required to file.

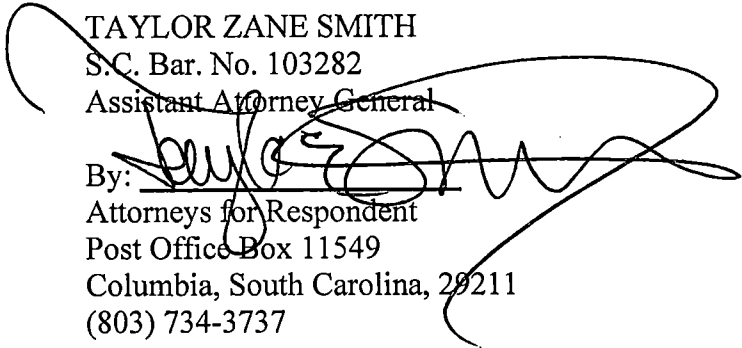
15. Respondent moves to strike the document from the Case Management System so that this Court will not consider it.
16. The undersigned has not consulted with Petitioner about these motions because Petitioner is a pro se party and because the undersigned believes that such consultation would serve no useful purpose.

WHEREFORE, Respondent prays that this Court will dismiss the appeal or, in the alternative, compel Petitioner to serve and file an initial brief and designation of matter, strike the “explanation” filed by Petitioner on July 13, 2022, and hold all deadlines in abeyance until the Court has ruled upon this motion

Respectfully submitted,

ALAN WILSON
Attorney General

TAYLOR ZANE SMITH
S.C. Bar. No. 103282
Assistant Attorney General

By: 
Attorneys for Respondent
Post Office Box 11549
Columbia, South Carolina, 29211
(803) 734-3737

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STATE OF SOUTH CAROLINA,


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the State's motions to dismiss, motion to compel, and motion to strike has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

**Robert E. Dillard, 220045
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina 29669**

This 15th day of November 2022.



William Corbett, Jr.
Legal Assistant for Respondent



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ALAN WILSON
ATTORNEY GENERAL

November 15, 2022

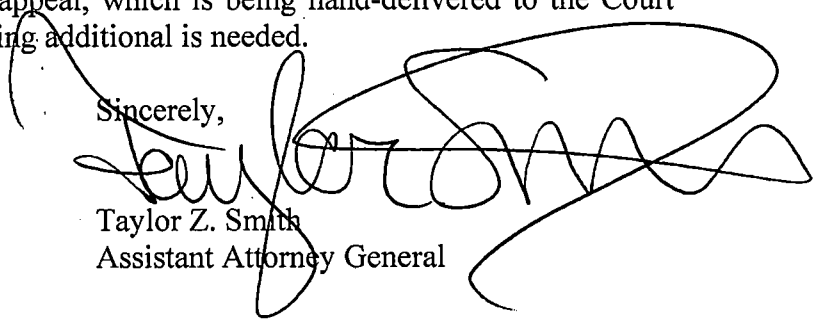
The Honorable Jenny A. Kitchings
Clerk of Court, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
(via hand-delivery)

RE: Robert E. Dillard v. State of South Carolina
Appellate Case No: 2022-000972

Dear Ms. Kitchings:

Enclosed please find the State's motions to dismiss, motion to compel, and motion to strike in the above-referenced post-conviction relief appeal, which is being hand-delivered to the Court today for filing. Please let me know if anything additional is needed.

Sincerely,


Taylor Z. Smith
Assistant Attorney General

TZS/wjc
Enclosure

cc: Robert E. Dillard, #220045 (with enclosure)

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Taylor Z. Smith, AAG
Attorney General's Office
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