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Dec 19 2022
SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

December 19, 2022

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: The State v. Roger Tremayne Barr
Appellate Case No: 2022-001730

Dear Ms. Kitchings:

Your office has kindly forwarded a copy of the pending motion to file the notice of appeal out of time. Please accept this letter in lieu of a formal response by the State.

The State takes no position on the late filing of the notice; however, I have been unable to find where there was timely service of the notice. It appears that Appellant was sentenced on April 4, 2022 after conviction. (See Motion, p. 1; see also Georgetown County Public Index, Case No. 2018A2220200421, <https://publicindex.sccourts.org/Georgetown/PublicIndex/CaseDetails.aspx?County=22&CourtAgency=22001&Casenum=2018A2220200421&CaseType>). While Appellant has provided proof of service of the notice on the solicitor on April 18, 2022, (Motion p. 2 and attachment), I can find no reference to timely service within the 10 days required by Rule 203(b)(2), SCACR. Therefore, the filing does not necessarily secure jurisdiction in the absence of some indication of timely service. *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.”).

Should you require anything further, please do not hesitate to contact me.

Sincerely,

s/ Melody J. Brown

Melody J. Brown
Senior Assistant Deputy Attorney General

MJB/abb

cc: R. Scott Joye, Esquire (via email only)
Robert M. Dudek, Esquire (via email only)
Assistant Solicitor Alicia A. Richardson (via email only)