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**Feb 10 2023**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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APPEAL FROM RICHLAND COUNTY  
J. Robert Hood, Circuit Court Judge

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Appellate Case No. 2023-000090

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The State,

Respondent,

v.

Diana Biernaski Jordan,

Appellant.

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**Respondent's Return to Appellant's Motion to Hold  
Appeal in Abeyance and Remand for Filing and Disposition  
of Motion for New Trial and Motion to Reconsider Sentence**

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Respondent files this return to Appellant's motion to hold this appeal in abeyance and remand to allow her to file post-trial motions. The Court should deny Appellant's motion because it would be futile and would needlessly delay this appeal when any post-trial motions filed by Appellant would be untimely and the trial court would not have jurisdiction to consider those post-trial motions.

**I. Procedural History**

Appellant's trial occurred between January 9 and January 11, 2023, and the jury returned a unanimous guilty verdict on all charges. The trial court sentenced Appellant on January 11, 2023, to five years suspended upon a one-year active service. *See Exhibit 2 to Appellant's Motion, Sentencing Sheets.* The trial court also ordered Appellant to pay restitution totaling \$39,998.70. *Exhibit 2 to Appellant's Motion.* On January 18, 2023, Appellant filed two post-trial motions: a

motion for a preliminary injunction and a motion to set aside the judgment. *See Exhibit A, Trial Court Orders Denying Appellant's Post-Trial Motions.* On January 20, 2023, the trial court issued orders denying Appellant's post-trial motions. *Exhibit A.*

On January 19, 2023, Appellant filed a notice of appeal with this Court. On January 23, 2023, Appellant submitted a letter to this Court with a request to withdraw her appeal without prejudice, but the Court informed Appellant on January 25, 2023, that any dismissal of the appeal would be with prejudice. Thus, on January 31, 2023, Appellant submitted the motion now pending before this Court, which requests that the Court hold her appeal in abeyance and remand to the trial court so that she can file additional post-trial motions. Specifically, Appellant would like to file post-trial motions for a new trial and to reconsider her sentence.

**II. The Court should deny Appellant's motion to hold her appeal in abeyance and remand to the trial court because it would needlessly delay this appeal when any post-trial motion filed by Appellant would be untimely and the trial court would lack jurisdiction to consider any new post-trial motions.**

Any post-trial motion filed by Appellant following a remand to the trial court would be untimely, and the trial court would lack jurisdiction to consider it. As a result, remanding Appellant's case to the trial court to allow Appellant to file untimely post-trial motions would needlessly delay this appeal. Thus, the Court should deny Appellant's motion to hold this appeal in abeyance and remand to the trial court.

The rules of criminal procedure expressly require a defendant to make post-trial motions within ten days after the imposition of the sentence. Specifically, "[e]xcept for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence." Rule 29(a), SCRCrimP. Our appellate courts have long found the trial court is without jurisdiction to hear untimely post-trial motions.

It is a long-standing rule of law that a trial [court] is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires. Each week of court is a separate term. The rule has two exceptions: a timely post-trial motion and a motion for a new trial based on after-discovered evidence. Rule 29 states that, except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten days after the imposition of the sentence. Rule 29 further states that the court's jurisdiction to hear the motion will not expire with the term of court if the party has filed a timely motion. However, *if the motion is not made within ten days of sentencing, the court will be without jurisdiction to entertain the motion.*

*State v. Campbell*, 376 S.C. 212, 215–16, 656 S.E.2d 371, 373 (2008) (emphasis added) (citations omitted).

Our Supreme Court has recently considered Rule 29 in *State v. Pfeiffer*. In *Pfeiffer*, the Court found a second post-trial motion, filed twenty-nine days after sentencing and which did not relate to the first post-trial motion, was untimely and the trial court lacked jurisdiction to consider it. 427 S.C. 10, 13–14, 828 S.E.2d 764, 766 (2019).

In this case, the trial court sentenced Appellant on January 11, 2023, and thus, Appellant's deadline to file post-trial motions was ten days later on January 23, 2023.<sup>1</sup> Because we are well past the post-trial motion deadline of January 23, 2023, any additional post-trial motion filed by Appellant would be untimely, and the trial court would lack jurisdiction to consider it.

Further, even if Appellant claims her new post-trial motions relate to the timely post-trial motions she filed on January 18, 2023, the trial court would still lack jurisdiction to consider the new post-trial motions because the trial court ruled on Appellant's January 18 motions on January 20, 2023, and more than ten days have passed since January 20, 2023. *Exhibit A*. Thus, new post-trial motions that related to Appellant's January 18 post-trial motions would nonetheless be

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<sup>1</sup> The ten-day deadline fell on Saturday, January 21, 2023, and pursuant to Rule 35, SCRCrimP, the deadline moved to the following business day, Monday, January 23, 2023.

untimely because more than ten days have passed since the trial court ruled on the January 18 post-trial motions. *See Pfeiffer*, 427 S.C. at 13, 828 S.E.2d at 766 ("Successive Rule 29(a) motions are generally not permitted. However, where a second Rule 29(a) is related to the disposition of the first Rule 29(a) motion, the trial court retains authority to hear and dispose of the subsequent motion, *provided the subsequent motion is filed within ten days of the disposition of the prior post-trial motion.*" (emphasis added)).

Finally, Appellant's notice of appeal with this Court did not stay or hold in abeyance the deadline for filing post-trial motions with the trial court. Respondent is unaware of any statute, court rule, or case law that allows a notice of appeal to stay the ten-day deadline for filing post-trial motions. If such a stay were possible, appellants could artificially extend the deadline for post-trial motions by filing a notice of appeal and, when ready, seek a stay of the appeal and remand to file a post-trial motion many months or years after sentencing. Such a result would swallow Rule 29(a), defeat the purpose of imposing a deadline for filing post-trial motions, and violate the "long-standing rule of law" that the trial court loses jurisdiction to consider criminal matters after the term of court ends. *See Campbell*, 376 S.C. at 373, 656 S.E.2d at 215 ("It is a long-standing rule of law that a trial [court] is without jurisdiction to consider a criminal matter once the term of court during which judgment was entered expires.").

Accordingly, the trial court would lack jurisdiction to consider any post-trial motion filed by Appellant following a remand by this Court. Thus, staying this appeal and remanding to the trial court to allow Appellant to file post-trial motions would be futile and would needlessly delay this appeal. The Court should deny Appellant's motion.

Respectfully Submitted,

s/ Steven Jordan, Jr.  
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*Attorneys for Respondent*

February 10, 2023

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PROOF OF SERVICE

I certify that I have served Respondent's Return to Appellant's Motion to Hold Appeal in Abeyance and Remand for Filing and Disposition of Motion for New Trial and Motion to Reconsider Sentence on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, and by email on February 10, 2023, addressed to the parties at their addresses of record:

Diana B. Jordan  
104 Woodglen Lane  
Chapin, SC 29036  
[dbjordan2000@yahoo.com](mailto:dbjordan2000@yahoo.com)

February 10, 2023

s/ Amy Proveaux

Amy Proveaux

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