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**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Horry County  
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge  
Honorable William H. Seals, Jr., Circuit Court Judge  
Appellate Case Tracking No. 2021-001271

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The State,

Respondent,

vs.

Jamie Goss,

Appellant.

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**INITIAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUES ON APPEAL

- I. The circuit court did not abuse its discretion in denying Appellant's motion for compassionate release. His claim was premised primarily on a federal release statute which is inapplicable in state court. Further, to the extent he now asserts release is appropriate under the CARES Act, that claim is not preserved. Finally, neither the CARES Act nor the release provisions of 18 U.S.C.A. 3582 preempt state law and the only means for release under state law is section 24-21-715 of the South Carolina Code which is inapplicable based on Appellant's claims.

## STATEMENT OF THE CASE

In November 2006, the Horry County Grand Jury indicted Appellant on charges of trafficking crack cocaine. After a trial, he was convicted and sentenced to twenty-eight years in prison. Appellant filed a Motion for Compassionate Release for Extraordinary Reasons on March 12, 2021. (Motion; R.\_\_\_\_). On August 9, 2021, the Honorable R. Ferrell Cothran, Jr., denied Appellant's motion. (August 2021 Order; R.\_\_\_\_). Appellant, on August 18, 2021, served a "Motion to Alter or Amend or Make Additional Fact Findings Pursuant to S.C. Rules Civ. Proc. 59(e) and S.C. Rules Civ. Proc. 52(b), and Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (June 25, 2001)."<sup>1</sup> (Motion to Alter or Amend; R.\_\_\_\_). On September 8, 2021, the Honorable William H. Seals, Jr., filed an Order denying Appellant's motion. (September 2021 Order; R.\_\_\_\_). Appellant served a Notice of Appeal on October 21, 2021.<sup>2</sup>

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<sup>1</sup> It is questionable whether this is an appropriate motion, but it was considered and ruled upon by the circuit court.

<sup>2</sup> In a letter to this Court dated June 28, 2022, to correct deficiencies in his Notice of Appeal, Appellant indicates he received written notice of the Order denying his motion on September 21, 2021. As a result, his appeal should be considered untimely pursuant to Rule 203(b)(2), SCACR ("In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment."). Because Appellant failed to timely serve his Notice of Appeal, this Court should dismiss the appeal for lack of jurisdiction. See State v. Devore, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) ("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.").

## ARGUMENT

- I. **The circuit court did not abuse its discretion in denying Appellant's motion for compassionate release. His claim was premised primarily on a federal release statute which is inapplicable in state court. Further, to the extent he now asserts release is appropriate under the CARES Act, that claim is not preserved. Finally, neither the CARES Act nor the release provisions of 18 U.S.C.A. 3582 preempt state law and the only means for release under state law is section 24-21-715 of the South Carolina Code which is inapplicable based on Appellant's claims.**

Appellant contends the circuit court erred in denying his motion for compassionate release. As noted above, it is likely the appeal was untimely and should be dismissed. Even if not untimely, the circuit court did not abuse its discretion in denying Appellant's motion which was based on the federal release statute. Appellant now contends the CARES Act entitles him to release because it preempts state law. However, any issue related to the CARES Act is not properly preserved for review on appeal. Further, neither the CARES Act nor section 18 U.S.C.A. 3582, the statute Appellant originally premised his request for relief upon, preempt state law and are applicable only to federal sentences. Finally, South Carolina's compassionate relief statute, section 24-21-715 of the South Carolina Code, is not applicable in this case.

### Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003).

### Preservation

Initially, Appellant premised his original Motion for Compassionate Release on section 18 U.S.C.A. 3582, and Article I section 15 of the South Carolina Constitution. In his Brief, Appellant

now contends the CARES Act and specifically section 12003(b)(2) provides for his release. This claim was never presented to the circuit court and as a result his arguments are not properly preserved for review on appeal. See e.g., State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) (“For an issue to be properly preserved it has to be raised to and ruled on by the trial court.”); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding a defendant may not argue one ground at trial and another on appeal).

### **Merits**

On the merits, the circuit court did not err in denying Appellant’s request for compassionate release. He asserts two federal statutes require his release from prison. Neither section 18 U.S.C.A. 3582 nor the CARES Act, Pub. L. No. 116-136, 134 Stat. 281 § 12003(b)(2) preempt state law or are applicable to persons serving sentences at the state and not federal level. “The preemption doctrine is rooted in the Supremacy Clause of the United States Constitution and provides that any state law that conflicts with federal law is ‘without effect.’” Priester v. Cromer, 401 S.C. 38, 43, 736 S.E.2d 249, 252 (2012) (quoting Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992)).

The South Carolina Supreme Court recently explained:

This Court has recognized that [f]ederal legislation threatening to trench on the States’ arrangements for conducting their own governments should be treated with great skepticism, and read in a way that preserves a State’s chosen disposition of its own power, in the absence of the plain statement in the language of the legislation of Congress’ intent to alter the usual constitutional balance of state and federal powers. “This plain statement rule is nothing more than an acknowledgement that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere.” “Consideration of issues arising under the Supremacy Clause start[s] with the assumption that the historic police powers of the States [are] not superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress.” Accordingly, “[t]he purpose of Congress is the ultimate touchstone of pre-emption analysis.” “To discern Congress’ intent

we examine the explicit statutory language and the structure and purpose of the statute.”

Adams v. McMaster, 432 S.C. 225, 242–43, 851 S.E.2d 703, 712 (2020) (citations omitted). An examination of both the CARES Act section 12003(b)(2) and section 18 U.S.C.A. 3582 reveal no intention by Congress to preempt state law, especially as it relates to control and regulation of state prisoners convicted of state crimes being housed in state prisons. As a result, neither statute compels release of Appellant.

Additionally, the only provision under South Carolina law which entitles Appellant to “compassionate release” would be section 24-21-715 of the South Carolina Code. Section 24-21-715 allows the parole board to “order the release of an inmate who is terminally ill, geriatric, permanently incapacitated, or any combination of these conditions.” S.C. Code Ann. § 24-21-715(B) (Supp. 2022). Appellant has provided no evidence he qualifies for release under any of the three categories.

Neither federal statute explicitly preempts state law as it relates to Appellant or his release. Additionally, Appellant does not qualify for release under the only South Carolina statute which could provide for early release. Accordingly, the circuit court did not err in denying Appellant’s Motion for Compassionate Release.<sup>3</sup>

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<sup>3</sup> Finally, to the extent Appellant seems to argue the Department of Corrections has failed to provide proper care and protection related to Covid-19, that is not appropriate for consideration in this appeal. The State would note that the Department of Corrections maintains significant protocols and policies related to Covid-19. See South Carolina Department of Corrections COVID-19 Action Plan, [https://www.doc.sc.gov/scdc\\_covid-19\\_action\\_plan.pdf](https://www.doc.sc.gov/scdc_covid-19_action_plan.pdf) (last visited March 15, 2023).

## CONCLUSION

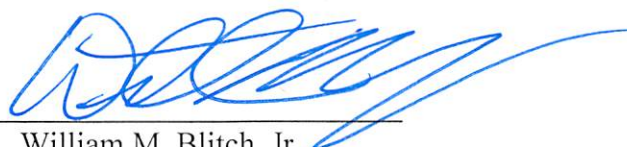
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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