

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to the Court of Appeals  
Appeal from Williamsburg County  
William H. Seals, Jr., Circuit Court Judge  
Appellate Case No. 2023-000725  
\_\_\_\_\_

**RECEIVED**

**Jun 23 2023**

S.C. SUPREME COURT

The State,

Respondent,

v.

Bobby Joe Fulton, Jr.,

Petitioner.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**  
\_\_\_\_\_

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## **STATEMENT OF QUESTIONS PRESENTED**

- I. The Court of Appeals correctly dismissed Petitioner's appeal for failing to properly perfect the appeal in accordance with Rule 203(d), SCACR.

## STATEMENT OF THE CASE

### Procedural History

Petitioner was convicted of homicide by child abuse and unlawful conduct towards a child. Based upon the records in the public index, Petitioner appears to have received a life sentence for homicide by child abuse and a consecutive ten-year sentence for unlawful conduct. On December 28, 2022, the Court of Appeals received a Notice of Appeal from Petitioner which was dated December 9, 2022. The Court of Appeals noted several deficiencies and sought to have Petitioner correct them. By letter dated December 30, 2022, the Court of Appeals asked Petitioner to provide a copy of the order or judgment being challenged on appeal, a proof of service, and proof of filing with the county clerk of court. Instead of providing the requested documentation, Petitioner sent a change of address and a request for transcript.

By Order dated February 2, 2023, the Court of Appeals dismissed Petitioner's appeal for failing to cure the noted deficiencies. Petitioner filed a Petition for Rehearing, another request for the transcript, and a Motion for Declaration. Again, Petitioner did not provide a proof of service for the Notice of Appeal, a copy of the underlying order or judgment from which he appealed, or proof that he filed a copy with the Williamsburg County Clerk of Court. As a result, the Court of Appeals denied the Petition for Rehearing. Petitioner subsequently filed a Petition for Writ of Certiorari, which was served on the solicitor's office, and this Return follows.

## ARGUMENT

**The Court of Appeals correctly dismissed Petitioner's appeal for failing to properly perfect the appeal in accordance with Rule 203(d), SCACR.**

Petitioner maintains the Court of Appeals erred in dismissing his appeal based on his failure to comply with Rule 203(d) of the South Carolina Appellate Court Rules. Petitioner failed to comply with the requirements of Rule 203(d). Most significantly, he never provided proof of service of his Notice of Appeal within a timely manner. As a result, the Court of Appeals properly dismissed Petitioner's appeal.

“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.” USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (quoting Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004)). In the instant case, there is no evidence Petitioner timely served the State or even attempted to timely serve the State with his Notice of Appeal because he never filed the requisite Proof of Service under Rule 203(d)(1)(B)(i) of the South Carolina Appellate Court Rules. Even after being asked to submit a proof of service and having multiple opportunities to submit one, Petitioner has never submitted a proof of service indicating he timely served the State of South Carolina. As a result, the Court of Appeals properly dismissed the underlying action.

Further, Rule 203(d)(1)(B) requires other documents to accompany the Notice of Appeal in order for it to be properly considered. For example, the appellant must submit “A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing.” Rule 203(d)(1)(B)(ii), SCACR. As this Court has indicated: “The failure of a party to comply with the

procedural requirements for perfecting an appeal may deprive the court of “appellate” jurisdiction over the case.” State v. Brown, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (quoting Great Games, Inc. v. South Carolina Dept. of Rev., 339 S.C. 79, 82 n.5, 529 S.E.2d 6, 7 n.5 (2000)). Because Petitioner never met the procedural requirements of perfecting the appeal by providing the Court of Appeals with a copy of the underlying judgment or order, or proof of filing with Williamsburg County, the Court of Appeals was deprived of appellate jurisdiction. As a result, the Court properly dismissed the underlying appeal, and this Court should deny the Petition for Writ of Certiorari.

## CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny the Petition for Writ of Certiorari to the Court of Appeals.

Respectfully submitted,

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