

The Supreme Court of South Carolina

Benjamin Ray Nabors, Petitioner,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2013-001195

The Honorable Clifton Newman
Laurens County
Trial Court Case No. 2011CP3000308

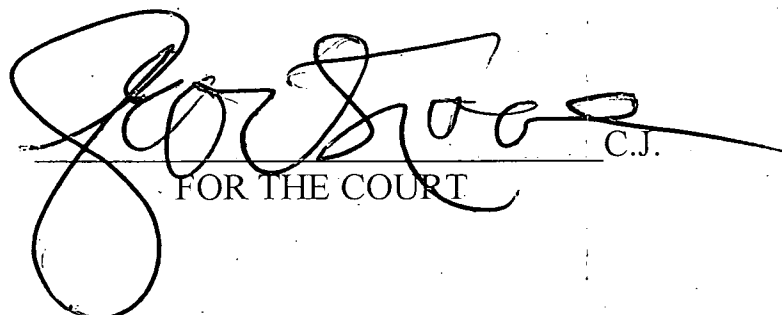
ORDER

The order on appeal was signed by the circuit court judge on April 25, 2013. Petitioner indicates that he did not receive a copy of the order showing that it had been filed with the clerk of the circuit court until May 31, 2013. The proof of service that petitioner has filed states that counsel for the respondent was served with a copy of the notice of appeal on July 2, 2013.

The time to serve the notice of appeal on opposing counsel is limited and that time cannot be extended. Rule 263(b), SCACR; Elam v. South Carolina Dept. of Transportation, 361 S.C. 9, 602 S.E.2d 772 (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.”).

Based on the failure of the petitioner to timely serve the notice of appeal under Rules 243(b) and 203(b)(1) of the South Carolina Appellate Court Rules, the notice of appeal is hereby dismissed. The motion for an evidentiary hearing, the motion

for the appointment of counsel and any other request for relief that petitioner has filed in this matter are denied as moot.¹ The remittitur will be sent as provided by Rule 221(b), SCACR.


C.J.
FOR THE COURT

Columbia, South Carolina
July 22, 2013

cc: Salley W. Elliott, Esquire
Mr. Benjamin Nabors, #233844

¹ Petitioner asserts that he timely filed a Rule 59, SCRCF, motion with the circuit court. Further, petitioner has filed a motion seeking an extension to file a Rule 59 motion with this Court. Any issue regarding the filing of the Rule 59 motion or any extension of the time to file a Rule 59 motion is a matter that would have to be raised to the circuit court rather than to this Court. If a timely post-trial motion was in fact timely made, then the time to appeal does not begin to run until that motion is ruled on. Rule 203(b)(1), SCACR ("When a timely . . . motion to alter or amend the judgment (Rules 52 and 59, SCRCF), . . . has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion."); *see also Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986) (if a timely post-trial motion under Rule 59, SCRCF, is filed, any appeal is premature); *see also* Rule 6(b), SCRCF ("The time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them.").