

MOTION TO ALLOW LATE FILING OF NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of General Sessions

Marvin H. Dukes III, Circuit Court Judge

Case Nos. 2024GS0803343-45

The State,

Respondent,

v.

Robby Willie Tracy,

Appellant.

MOTION TO ALLOW LATE FILING

Appellant Robby Willie Tracy, by and through the undersigned counsel, hereby moves this Court to allow the late filing of the Notice of Appeal in this matter. In support of this motion Appellant states as follows:

1. Appellant pled guilty in the above-referenced indictments on September 5, 2024 in the Berkeley County Court of General Sessions and was sentenced by the Honorable Marvin H. Dukes III. Appellant also pled guilty in this same proceeding to indictments 2022GS1000937 (Charleston County) and 2022GS2700414 (Jasper County) and was sentenced in a global resolution of the charges in these three counties. Appellant was represented by the undersigned on the Charleston and Berkeley County charges and by Hillary Futch, Esq. on the Jasper County charges.
2. Appellant timely served his Notice of Appeal on counsel of record and filed the same with the lower court on September 16, 2024.
3. At the time of service of the Notice of Appeal the undersigned was preparing for a double murder trial and the attorney who typically assists the undersigned with initiating appeals was out of the country. Due to these circumstances and a misunderstanding by the undersigned's office staff, the Notice of Appeal was not filed with the clerk of this Court within ten days after the Notice of Appeal was served.
4. The notice of appeal from Jasper County was timely served and filed with the clerk of this Court on September 16, 2024 and the matter was assigned Appellate Case No.

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SC Court of Appeals

2024-001581.

5. Appellant filed his Notice of Appeal with this Court on November 4, 2024 and requested that it be consolidated into Appellate Case No. 2024-001581.
6. Upon information and belief, Appellant has already been assigned appellate counsel from the South Carolina Commission of Indigent Defense.
7. Pursuant to Rule 263(b) of the South Carolina Appellate Court Rules, the time prescribed “for performing any act *except the time for serving* the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court...” (Emphasis added.) Appellant timely served the Notice of Appeal on September 16, 2024.

Therefore, for the foregoing reasons, Appellant respectfully requests that the Court grant this motion to extend the time prescribed for filing and accept the filing of the Notice of Appeal out of time.

Respectfully submitted,

November 18, 2024

s/ Melisa W. Gay
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CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA
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CERTIFICATE OF SERVICE

I certify that I have served the Motion to Allow Late Filing on Respondent by electronic means, pursuant to Rule 262(c)(3), SCACR, on this day via email to Rachel Janowski, Esq. A copy of said email is enclosed herewith.

November 18, 2024

s/ Melisa W. Gay

Melisa W. Gay

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Attorney for Appellant

State v. Robby Tracy

From: Melisa Gay (mgaylaw@yahoo.com)

To: janowskir@scsolicitor9.org

Date: Monday, November 18, 2024 at 03:28 PM EST

Rachel, please see attached for service on you pursuant to Rule 262(c)(3), SCACR. Thank you.

Melisa W. Gay, LLC

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