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SC Court of Appeals

ALAN WILSON  
ATTORNEY GENERAL

September 8, 2025

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Antonio Simmons v. State – Appellate Case No. 2023-001091

Dear Ms. Kitchings:

On August 28, 2025, Petitioner Antonio Simmons filed a motion entitled “Motion to Cure Deficiency in Notice of Intent to Appeal” in the above-referenced post-conviction relief (“PCR”) appeal. Please accept this letter in lieu of a formal return.

In his motion seeking to cure a deficiency with his notice of appeal, Simmons acknowledges the following unfortunate circumstances: (1) the order on appeal was issued on April 10, 2023; (2) the Charleston County Clerk of Court mailed a copy of the order to Simmons’s appointed PCR counsel on April 19, 2023; (3) after PCR counsel sadly passed away on May 9, 2023, a copy of the order was sent to Hervery B.O. Young, Esquire at the South Carolina Commission on Indigent Defense (“SCCID”) on May 31, 2023; (4) the physical file associated with Simmons’s case was delivered to SCCID in June of 2023; and (5) Young served and filed a notice of appeal on Simmons’s behalf on July 10, 2023, after prompting from counsel for the State. Furthermore, through his motion, Simmons candidly acknowledges “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.” Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). Simmons then asks this Court to find the order—for purposes of determining when the time for filing the notice of appeal began to run—was received on July 6, 2023, which, if accurate, would render the service of the notice of appeal timely. See Rule 203(b)(1), SCACR (“A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.”).

Outside of reiterating the rule cited by Simmons on the jurisdictional nature of the requirement for timely service of the notice of appeal in South Carolina, the State wishes to leave this matter to the sound discretion of the Court. Elam, 361 S.C. at 14-15, 602 S.E.2d at 775; *cf.* Bowles v. Russell, 551 U.S. 205, 214 (2007) (“Today we make clear that the timely filing of a

notice of appeal in a civil case is a jurisdictional requirement. Because this Court has no authority to create equitable exceptions to jurisdictional requirements, use of the ‘unique circumstances’ doctrine is illegitimate.”). Thank you very much, and, if you should have any questions or concerns or if a more formal return is desired, please do not hesitate to contact me.

Sincerely,



Mark R. Farthing  
Senior Assistant Deputy Attorney General  
S.C. Bar Number 76901

MRF/

cc: Kathrine H. Hudgins, Esq. (via email)  
Victim Advocacy Division