

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**RECEIVED**

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CERTIORARI TO CHARLESTON COUNTY  
Honorable Maite Murphy, Circuit Court Judge

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**Sep 24 2025**  
S.C. SUPREME COURT

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Appellate Case No. 2024-001348

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ISHMEL LEMON,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**MOTION TO DISMISS**

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This matter is before the Court by way of an untimely notice of appeal filed by Ishmel Lemon (Petitioner) on August 16, 2024. Petitioner served the notice of appeal on Respondent that same day. However, the notice of appeal and the proof of service do not indicate when Petitioner received written notice of entry of the final order in the circuit court. The Order of Dismissal was filed January 18, 2024. Due to the timeframe between the final order and the filing of the notice of appeal, the undersigned reached out to Petitioner's PCR counsel, who indicated he had received the filed order by June 1, 2024. See Exhibit A. Based on this, the notice of appeal was not timely served. See Rule 203(b)(1) ("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."). Because this requirement is jurisdictional, this Court cannot extend the timeframe for serving the notice of appeal. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (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.”).

Thus, Respondent respectfully moves to dismiss this appeal for lack of jurisdiction.<sup>1</sup>

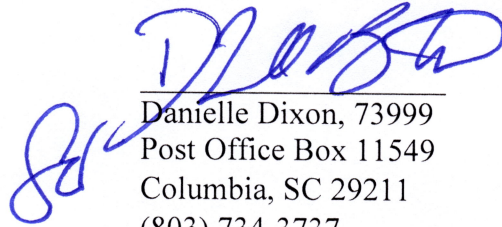
Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

D. RUSSELL BARLOW, II  
Senior Assistant Deputy Attorney General

DANIELLE DIXON  
Assistant Attorney General  
S.C. Bar No. 73999



Danielle Dixon, 73999  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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<sup>1</sup> Petitioner has filed another PCR application, which is pending in the circuit court (2024-CP-10-05709). Respondent had planned to move to dismiss that action due to this pending appeal. See Rule 71.1(b), SCRCF (“An application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected.”). However, if this appeal is dismissed for lack of jurisdiction, Petitioner can raise an allegation in that action related to Austin relief in the circuit court.