

RECEIVED

Dec 03 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Jessica A. Salvini, Circuit Court Judge

Case No. 2025-001494

Joshua Hawkins, Appellant,

v.

Delta Airlines, Inc., Respondent.

**RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR EXTENSION OF TIME
TO FILE AND SERVE APPELLANT'S INITIAL BRIEF**

COMES NOW, Respondent Delta Air Lines, Inc. (improperly named "Delta Airlines, Inc."), by and through the undersigned counsel, and pursuant to Rule 240(e), SCACR, files its Return to Appellant's Motion for Extension of Time to File and Serve Appellant's Initial Brief, and in support thereof, states as follows:

Appellant Joshua Hawkins, a Greenville county attorney proceeding *pro se*, appeals the Circuit Court's dismissal of his Magistrate Court appeal based on his untimely filing of his Notice of Appeal with the Magistrate Court in violation of Rule 18(a), SCRMC. Now, Appellant has failed to timely file or serve his Initial Brief in *this* appeal. Appellant asks the Court to extend the expired deadline, merely because he forgot to calendar his own deadline. (Motion for Extension at p. 1, Ex. A at p. 2.) Appellant should know this is not good cause, and the Court should not pass over

the clear language of Rules 208(a)(4) and 260(a), SCACR to rescue Appellant from his own inaction. The Clerk must dismiss the appeal.

“**Upon** the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court **shall** sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260.” Rule 208(a)(4), SCACR (emphasis added). “Whenever it appears that an appellant . . . has failed to comply with the requirements of these Rules, the clerk **shall** issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Rule 260(a), SCACR (emphasis added). If a court rule is plain and unambiguous, the Court “applies the same rules of construction used to interpret statutes” and must apply the rule as written. *See Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003); *see also Swing v. Swing*, 445 S.C. 340, 346, 914 S.E.2d 158, 161 (2025) (“In recent years, the Court has refocused the analysis of our Rules onto their plain language.”). “The term ‘**shall**’ in a statute means that the action is **mandatory**.” *Wigfall v. Tideland Utils.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) (emphasis added).¹

¹ However, if it is “necessary” to fulfill the intent of the statute or constitutional provision by interpreting “shall” to be permissive, then “shall” may be construed as permissive rather than mandatory. *See Williams v. Benet*, 35 S.C. 150, 158, 14 S.E. 311, 313 (1892). In its 1892 decision, the Supreme Court interpreted whether the Constitution mandated that Supreme Court Justices “shall” complete their six-year terms, without being able to resign:

The view contended for rests largely upon the assumption that the words, “*shall* continue in office until their successors shall be elected and qualified,” must be construed as imperative, and that the effect of these words is to forbid a Justice of the Supreme Court from vacating his office by resignation or otherwise, before the expiration of the term for which he has been elected. But this view ignores the well settled rule that in the construction of a statute or a constitution, the word “shall” may receive a permissive, rather than an imperative, interpretation, when necessary to carry out the true intent of the provision in which such word is found.

Here, the Clerk must issue the order of dismissal, because Appellant did not file or serve his Initial Brief or designation of matters “within the time prescribed.” *See* Rule 208(a)(4), SCACR. The Court² did not extend Appellant’s initial brief filing deadline before it passed, and therefore the Clerk must dismiss the appeal. Rules 208(a)(4), 260(a), SCACR. Appellant then may file a Motion to Reinstate the Appeal under Rule 260(a) and demonstrate to this Court that his failure to calendar his own deadline constitutes “good cause” to reinstate his appeal.³ *See* Rule 260(a), SCACR.

“[T]he right to an appeal may be lost through a variety of actions by an appellant, such as: (1) failure to timely serve a notice of appeal under Rule 203, SCACR; (2) failure to serve and file an initial brief and designation of matter under Rule 208(a)(4), SCACR; or (3) failure to serve and

Williams, 35 S.C. at 158, 14 S.E. at 313 (emphasis in original). But when the meaning is unambiguous, the rules of statutory interpretation do not apply. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (“Where the statute’s language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”); *Richland Cty. v. S.C. Dep’t of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) (“‘Under the rules of statutory interpretation, use of words such as “shall” or “must” indicates the legislature’s intent to enact a **mandatory** requirement.’ *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002).”) (emphases added).

² Appellant implies the issue of Delta’s consent has any significance to the analysis. (*See* Motion for Extension at pp. 1-2.) It does not. As Rule 263(b), SCACR clearly states: “The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.”

³ But that cannot be good cause under these circumstances where an attorney—representing himself—fails to even calendar his own deadline. *See Morris v. BB&T Corp.*, 438 S.C. 582, 588, 885 S.E.2d 394, 398 (2023) (“The failure to accurately calendar a filing deadline will not constitute good cause for reinstating an appeal in every instance.”); *Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021) (“Rules are rules, and due dates matter.”); *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) (“[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.”). Nevertheless, such issue is not ripe unless Appellant timely files a Motion to Reinstate.

file a record on appeal and final brief under Rules 210 and 211, SCACR. *See* Rule 231, SCACR.” *State v. Serrette*, 375 S.C. 650, 652, 654 S.E.2d 554, 555 (Ct. App. 2007). This is a black and white case where Appellant “fail[ed] to serve and file an initial brief and designation of matter under Rule 208(a)(4), SCACR.” *See id.* Appellant asks the Court to extend this deadline—eight days *after* the deadline expired and only after Delta moved to dismiss the appeal. The Court has no obligation to rescue Appellant from his own inaction. Instead, the Court should allow the clear Appellate Court Rules to operate and address a Motion to Reinstate only if Appellant chooses to timely file one.

WHEREFORE, Respondent Delta Air Lines, Inc. (improperly named “Delta Airlines, Inc.”) respectfully requests the Court deny Appellant’s Motion for Extension of Time to File and Serve Appellant’s Initial Brief.

December 3, 2025

Respectfully submitted,

s/ Brian M. Peters, Jr.
C. Daniel Atkinson (S.C. Bar # 72721)
datkinson@wajlawfirm.com
Brian M. Peters, Jr. (S.C. Bar # 105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar St., Suite 200
Spartanburg, SC 29306
(864) 591-1113
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Jessica A. Salvini, Circuit Court Judge

Case No. 2025-001494

Joshua Hawkins, Appellant,

v.

Delta Airlines, Inc., Respondent.

RECEIVED
Dec 03 2025
SC Court of Appeals

PROOF OF SERVICE

I certify that on December 3, 2025, I have served, or caused to be served, the ***Respondent's Return to Appellant's Motion for Extension of Time to File and Serve Appellant's Initial Brief*** on the following Counsel for Appellant via Email, addressed as follows:

Joshua T. Hawkins (S.C. Bar #78470)
josh@hjllesc.com
Helena L. Jedziniak (S.C. Bar #100825)
helena@hjlscs.com
Hawkins & Jedziniak, LLC
1225 South Church St.
Greenville, SC 29605

s/ Brian M. Peters, Jr.
C. Daniel Atkinson (S.C. Bar # 72721)
datkinson@wajlawfirm.com
Brian M. Peters, Jr. (S.C. Bar # 105911)
bpeters@wajlawfirm.com

WILKES ATKINSON & JOYNER, LLC
127 Dunbar St., Suite 200
Spartanburg, SC 29306
(864) 591-1113
Attorneys for Respondent