

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

DEC 23 2013

SC Court of Appeals

Appeal from Newberry County

Honorable Eugene C. Griffith, Jr., Judge

Appellate Case No. 2013-001448

THE STATE,

RESPONDENT,

vs.

HAROLD R. AYTON,

APPELLANT.

RETURN TO MOTION TO REINSTATE

Respondent, by and through undersigned counsel and in response to Appellant's pro se "motion for rehearing and reinstate appeal", would respectfully show unto this Court:

I.

It appears Appellant was convicted of two counts of criminal sexual conduct with a minor and two counts sex exploitation of a minor all offenses in the first degree. He was sentenced to thirty-five years for each count of criminal sexual conduct and five years for each count of sexual exploitation. The Appellant entered guilty pleas to the charges and was sentenced on December 4, 2012.

II.

The undersigned is in receipt of a letter forwarded by this Court to Appellant requesting that Appellant provide the Court with proof of service showing the State was timely served with a Notice of Appeal from the convictions and sentences.

III.

On July 19, 2013, the Office of the Attorney General received a notice of appeal and proof of service from Appellant appealing the convictions and sentences in question. The proof of service is dated July 17, 2013. By Order filed September 18, 2013, this Court dismissed the appeal based upon Appellant's failure to provide a proof of service showing timely service of the notice of appeal. The remittitur was issued on October 8, 2013.

IV.

The undersigned thereafter received an Order filed by this Court on November 6, 2013 recalling the remittitur and a letter indicating it received a document from Appellant dated October 3, 2013 which the Court construed as a motion to reinstate the appeal. The Court permitted the Appellant ten days to provide proof of service showing that the State was timely served with the notice of appeal. Respondent is not in receipt of the letter or any other documents requesting reinstatement of the appeal.

V.

By document dated November 12, 2013, Appellant again forwarded a proof of service for the notice of appeal dated July 17, 2013.

VI.

Thereafter, Respondent received a pro se "motion for rehearing and motion to reinstate appeal" from Appellant. The Court has requested a return to the motion.

VII.

Respondent has no record of receiving a notice of appeal from Appellant's December 4, 2012 convictions and sentences until notice of appeal and proof of service dated July 17, 2013. The notice of appeal was not timely served required by Rule 203, SCACR. This Court properly dismissed the appeal for lack of timely service and the appeal should not be reinstated.

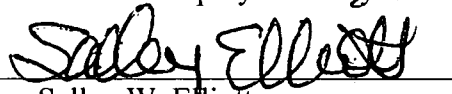
WHEREFORE, having made Return, Respondent submits the appeal cannot be reinstated because Appellant failed to timely served Respondent.

Respectfully Submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

BY:



Salley W. Elliott
S.C. Bar No: 1871

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 23, 2013

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HAROLD R. AYTON,

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion to Reinstate by depositing two copies of the same in the United States mail, postage prepaid, addressed to Appellant at Harold R. Ayton, 3353371, Broad River Correctional Inst. 4460 Broad River Road, Columbia, SC 29210 .

I further certify that all parties required by Rule to be served have been served.

This 23rd day of December, 2013.



ANGELA BENNETT
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

December 23, 2013

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Re: The State v. Harold R. Ayton
Appellate Case No: 2013-001448

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Return to Motion to Reinstate along with proof of service in the above-referenced case.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab
Enclosures

cc: Harold R. Ayton, 3353371
Ms. Trisha Allen