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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
The Honorable Christopher D. Taylor, Circuit Court Judge

Appellate Case No. 2025-001442

THE STATE, Respondent,

v.

DAMIEN AKANNO, Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

215 N. Harvin St.
Sumter, SC 29150
(803) 436-2185

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

This Court lacks appellate jurisdiction because Appellant failed to properly serve the State as required by Rule 203(b)(1), SCACR.

STATEMENT OF THE CASE

On January 29, 2025, Damien Akanno (Appellant) was tried by a criminal jury for driving upon a sidewalk pursuant to S.C. Code § 56-05-3835. (Municipal Return). He was found guilty as charged and sentenced to the recommended roadside bond for the offense. (Municipal Return). On January 30, 2025, Appellant filed a notice of appeal and served it on the Court Clerk Sumter Municipal and the Sumter Police Department. (Notice of Appeal filed January 30, 2025). The State was not served. On February 7, 2025, Honorable B. Keith Griffin granted Appellant's appeal in his municipal return. (Municipal Return). On June 24, 2025, an appeal hearing was held in the circuit court of Sumter in front of the Honorable Christopher Taylor. (Transcript of hearing dated June 24, 2025). The State was not present for this hearing. Appellant argued that the state failed to prove that his E-bike wasn't an E-bike. Appellant argued that everything about his E-bike met the code and that while his "optimal pedals" were not the ones "they liked" they were still optimal pedals. He further argued that the magistrate did not allow him to present evidence (Transcript of Hearing dated June 24, 2025). Judge Taylor allowed him to submit the evidence he wanted to submit at the magistrate's court. On July 18, 2025, Judge Griffin affirmed the magistrate's court decision. (Disposition of Appeal to the Circuit Court filed July 18, 2025). Appellant filed a timely notice of appeal pm July 18, 2025. On July 22, 2025, this court filed a deficiency notice alerting Appellant that he needed to serve the State at the address listed. On May 18, 2026, Appellant filed a compliant initial brief of Appellant. This appeal follows.

STANDARD OF REVIEW

Our appellate review in criminal cases is limited to correcting errors of law. City of Rock Hill v. Suchenski, 374 S.C. 12, 15, 646 S.E.2d 879, 880 (2007)

ARGUMENT

This Court lacks appellate jurisdiction because Appellant failed to properly serve the notice of appeal on the State as required by Rule 203(b)(1) SCACR.

Appellant is currently attempting to appeal from a magistrate conviction for driving upon a sidewalk pursuant to Section 56-5-3835. However, in initiating that appeal, Appellant did not serve the notice of appeal on the State and, instead only served it on the Court Clerk Sumter Municipal and the Sumter Police Department. Appellant was attempting to appeal stating the State failed to prove his E-bike was not an E-bike, therefore the State was a necessary and required party to the appeal, but Appellant failed to make it one by serving the notice of appeal on the State. Therefore, Appellant failed to serve his notice of appeal on all respondents as required by the mandates of our appellate court rules. As a result, Appellant's failure to comply with the service requirements, which are jurisdictional in nature, prevented this Court from acquiring appellate jurisdiction over the matter, and, since appellate jurisdiction does not exist, the appeal necessarily must be dismissed. Appellant's appeal should be dismissed due to lack of appellate jurisdiction.

S.C. Code Ann § 14-5-340 states "the circuit court has jurisdiction to 'hear appeals from magistrates' courts...to the court of general sessions and the court of commons pleas, upon notice as required by law being given for the hearing of such appeals." "Every person convicted before a magistrate of any offense whatever and sentenced may appeal from the sentence to the Court of Common Pleas for the county." S.C. Code Ann. §18-3-10. "The appellant, within ten days after sentence [in the magistrate court], shall file notice of appeal with the clerk of circuit court and shall serve notice of appeal upon the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge, stating the

grounds upon which the appeal is founded." S.C. Code Ann. § 18-3-30(A). Failure to comply with the procedural requirements for an appeal divests the court of appellate jurisdiction. State v. Brown, 358 S.C. 382, 596 S.E.2d 39 (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." USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008). See State v. Brown, 358 S.C. 382, 596 S.E.2d 39 (2004) (holding the failure of a party to comply with the procedural requirements for perfecting an appeal from magistrate's court deprives the circuit court of appellate jurisdiction over the case.)

The appellate rules of service are similar. Rule 203(b)(1), SCACR states that "A notice of appeal shall be served on all respondents withing thirty (30) days after receipt of written notice of entry of the order or judgment. The requirements for the service of the notice of appeal are jurisdictional in nature. See Conner v. City of Forest Acres, 348 S.C. 454, 461 560 S.E.2d 606, 609 (2002). ("Service of the notice of intent to appeal is a jurisdictional requirement, and the Court has no authority to extend or expand the time in which the notice of intent to appeal must be served."). Critically, if an appellant fails to properly serve the notice of appeal within the mandated time limits, the appellate court does not possess jurisdiction to consider the appeal and has no discretion or authority to ignore or excuse a failure to comply with the mandatory service requirements. See Elam v. South Carolina 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."); White v. State, 263 S.C. 110, 119, 208 S.E.2d 35,39 (1974) ("[I]t is well settled that in the absence of a notice of appeal having *been given* and timely served [the appellate court] has no jurisdiction over such an appeal." (emphasis added)).

Here, Appellant did not serve the State at all. An appeal hearing was held on June 24, 2025. The State was never noticed so there was no representation at the hearing by the State. Accordingly, due to Appellant's failure to properly serve the notice of appeal, the court of common pleas never acquired jurisdiction to have the appeal hearing nor to issue a decision regarding the appeal. Subsequently, this Court has not acquired proper jurisdiction to consider Appellant's appeal and therefore the appeal must be dismissed based on Appellant's failure to comply with the basic jurisdictional requirements of our appellate court rules.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that this appeal should be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

AMBREE M. MULLER
Assistant Attorney General

ERNEST A. FINNEY, III
Solicitor, Third Judicial Circuit

BY: _____
Ambree M. Muller
Bar # 104213

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

ATTORNEYS FOR RESPONDENT

October 16, 2026