

# The South Carolina Court of Appeals

The State, Respondent,

v.

Dametrioise R. Moss, Appellant.

Appellate Case No. 2013-002255

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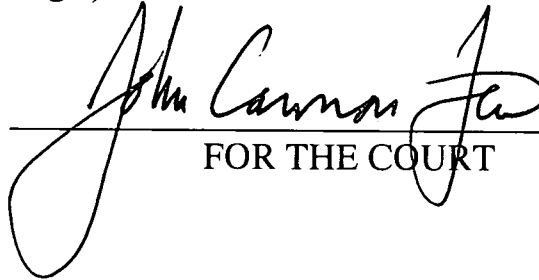
## ORDER

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On October 21, 2013, the appellant filed a pro se notice of appeal entitled "BELATED Appeal," which indicated the appellant believed his attorney had filed a timely notice of appeal from his convictions. After this Court's repeated requests to trial counsel Scott D. Robinson to provide various documents, including proof of timely service, Mr. Robinson wrote this Court to explain that on May 27, 2011, the appellant was convicted at trial of three counts of discharging a firearm into a dwelling, and acquitted of murder. Despite counsel's obligation to either obtain a waiver or file an appeal after conviction at trial, *see Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008), Mr. Robinson explains simply that the appellant "had ten (10) days to appeal a General Sessions conviction. He did not appeal." Because Mr. Robinson has convinced the Court that neither he nor the appellant perfected a timely appeal, we dismiss. *See Hill v. S.C. Dep't of Health & Env'tl. Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) ("The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court."); Rule 203(b)(2), SCACR. Remittitur will be sent pursuant to Rule 221(b), SCACR.

Mr. Robinson also argues in his letter that the appellant failed to timely file an action for post-conviction relief (PCR). Mr. Robinson's apparent efforts to defeat his client's rights notwithstanding, the one-year statute of limitations under section 17-25-45(A) (2014) for a PCR action does not apply when the applicant alleges his lawyer failed to perfect a direct appeal from a criminal conviction. *See Wilson v. State*, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002) ("[E]very defendant has a

right to file a direct appeal and one PCR application. In this case, [the petitioner] has not had 'one bite of the apple' since he has not received either a direct appeal from his conviction or a PCR hearing.").

 \_\_\_\_\_, C.J.  
FOR THE COURT

Columbia, South Carolina

cc:

Dametrioise Moss

Alan McCrory Wilson, Esquire

Salley W. Elliott, Esquire

Scott David Robinson, Esquire

**FILED**

3/11/2014 *MJ*