

The Supreme Court of South Carolina

The State, Respondent,

v.

Christopher Hampton, Appellant.

Appellate Case No. 2014-000424

Lower Court Case No. 2005-GS-42-03630

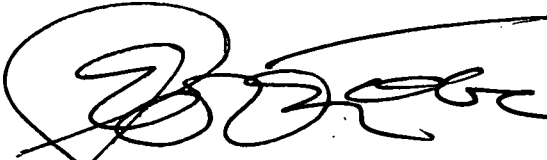
ORDER

The notice of appeal filed in this case is from a sentence imposed on April 3, 2006, as a result of a guilty plea. This notice of appeal was served on the Attorney General's Office on March 3, 2014.

The notice of appeal has not been timely served under Rule 203(b)(2) of the South Carolina Appellate Court Rules (SCACR). The time to serve the notice of appeal cannot be extended and the timely service of the notice of appeal is a jurisdictional requirement. Rule 263(b), SCACR; Elam v. South Carolina Dept. of Transportation, 361 S.C. 9, 602 S.E.2d 772 (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.”).¹

¹ A notice of appeal from this guilty plea was served on May 10, 2006. The South Carolina Court of Appeals dismissed this notice of appeal finding that the notice of appeal had not been timely served on opposing counsel. *State v. Christopher Hampton*, Appellate Case Number 2006-035313.

Accordingly, the notice of appeal is dismissed and the remittitur will be sent as provided by Rule 221, SCACR.²


C.J.
FOR THE COURT

Columbia, South Carolina

April 4, 2014

cc: Suzanne H. White, Esquire
Mr. Christopher Hampton
William Jeffrey McGurk, Esquire (counsel in 2006 PCR case)

² In the post-conviction relief (PCR) case of *Christopher Hampton v. State*, 2006-CP-42-03049, the PCR judge, among other things, found that petitioner was entitled to a belated review of his direct appeal issues in the 2006 guilty plea pursuant to *White v. State*. While the final order in this PCR case was filed on November 5, 2007, a *pro se* notice of appeal was not served and filed until April 3, 2013. This case was assigned Appellate Case Number 2013-000699.

By order dated June 26, 2013, this *pro se* notice of appeal was dismissed after appellant's counsel of record failed to respond to this Court's request for information to determine if the notice of appeal was timely. Further, to the extent petitioner may have been asking this Court to grant a belated appellate review in the 2006 post-conviction relief action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), the order denied that request *without prejudice* since *Austin* relief must be sought by filing a new application for post-conviction relief in the circuit court. Appellate Case Number 2013-000699.

Instead of filing a new application for post-conviction relief seeking belated appellate review under *Austin v. State* (which could ultimately result in this Court or the South Carolina Court of Appeals conducting a review of any direct appeal issues pursuant to *White v. State*), appellant has filed a second untimely notice of appeal from the guilty plea.