

The Supreme Court of South Carolina

Virginia Burgess, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000721

Lower Court Case No. 2006-CP-14-00086

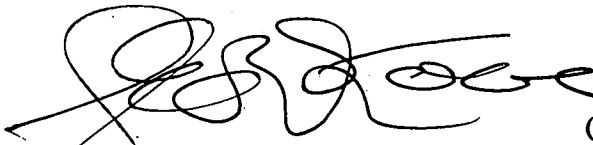
ORDER

After the circuit court issued its final decision in this post-conviction relief case in August 2007, the State served a notice of appeal on petitioner's counsel, F. Ricci Land Welch, Esquire. This Court subsequently denied the State's petition for a writ of certiorari, and the remittitur was sent on November 12, 2008. *Burgess v. State*, Appellate Case No. 2007-067719.

Petitioner has now filed *pro se* notice of appeal from the August 2007 decision. This notice of appeal was served on April 3, 2014.

The notice of appeal is dismissed since the notice of appeal has not been timely served under Rule 203 of the South Carolina Appellate Court Rules (SCACR). 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.”). This dismissal is without prejudice to whatever right petitioner may now have to seek relief under *Austin v. State* by filing a new application for post-conviction

relief in the circuit court.¹ The remittitur will be sent as provided by Rule 221, SCACR.


C.J.
FOR THE COURT

Columbia, South Carolina

April 14, 2014

cc: Daniel Francis Gourley, II, Esquire
Ms. Virginia Burgess, #266452
F. Ricci Land Welch, Esquire

¹ See *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) (discussing appellate procedure to be followed depending on findings of PCR judge on the *Austin* claim).