

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
The Honorable Doyet A. Early, III, Presiding Judge

Appellate Case No: 2014-001382

THE STATE,

Respondent,

vs.

BOBBY L. WOOD, Jr.,

Appellant.

**RETURN TO PETITION TO FILE AND SERVE NOTICE OF APPEAL OUT OF TIME
AND MOTION TO DISMISS**

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

On June 12, 2014, Appellant pled guilty to shoplifting, third or subsequent offense, and was sentenced that same date to three years imprisonment.

II.

Appellant, through counsel, filed and served notice of appeal on June 24, 2014, and petitions this Court for an order permitting him to file and serve notice of appeal from the guilty

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plea out of time. It appears from the petition submitted by counsel for Appellant that Appellant did not communicate his desire to appeal to his plea attorney in a timely manner to allow counsel to properly file and serve the notice of appeal.

III.

Respondent submits that the failure of Appellant to timely serve the notice of appeal is fatal to Appellant's ability to pursue a direct appeal in this case. Pursuant to the long-standing rules of appellate procedure, a notice of appeal from a criminal conviction must be served upon the State within ten (10) days of imposition of the sentence. See Rules 203(b)(2), 262(b), SCACR. The timely service is a jurisdictional requirement and this Court has no authority to extend or expand the time within which the notice of appeal must be served. State v. Hinson, 303 S.C. 92, 399 S.E.2d 422 (1990); Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985); Miller v. State, 269 S.C. 113, 236 S.E.2d 422 (1977). The State also may not consent to appellate jurisdiction because the parties may not consent to jurisdiction if it is not properly acquired.

IV.

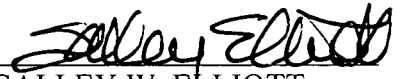
Appellant's notice of appeal should have been served upon Respondent on or before June 23, 2014 and was not served until June 24, 2014. The failure of Appellant to timely serve written notice of appeal upon the State deprives this Court of jurisdiction over this appeal and entitles Respondent to a dismissal of the appeal, regardless of the reasons for the failure to timely serve the notice.

WHEREFORE, Respondent respectfully prays that this Court dismiss the appeal; that the time limits for this appeal be held in abeyance until this Court's disposition of this motion; and for such other and further relief as this Court may deem just and proper.

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, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 3, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
The Honorable Doyet A. Early, III, Presiding Judge

Appellate Case No: 2014-001382

THE STATE,

Respondent,

vs.

BOBBY L. WOOD, Jr.,


Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Petition to File and Serve Notice of Appeal Out of Time and Motion to Dismiss Appeal on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorneys, C. David Hayes, P.O. Box 2247, Aiken, SC 29802 and Robert M. Dudek, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

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

This 3rd day of July, 2014.



ANGELA BENNETT
Administrative Assistant

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



ALAN WILSON
ATTORNEY GENERAL

July 3, 2014

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

Re: The State v. Bobby L. Wood, Jr.
Appellate Case N: 2014-001382

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the Return to Petition to File and Serve Notice of Appeal Out of Time and Motion to Dismiss Appeal 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: C. David Hayes, Esquire
Robert M. Dudek, Esquire
Ms. Trisha Allen

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SC Court of Appeals