

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUL 18 2014

SC 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

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.

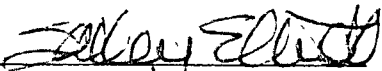
Appellant's notice of appeal should have been served upon Respondent on or before June 23, 2014 and was not served until June 24, 2014. The failure of Appellant to timely serve written notice of appeal upon the State deprives this Court of jurisdiction over this appeal and entitles Respondent to a dismissal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

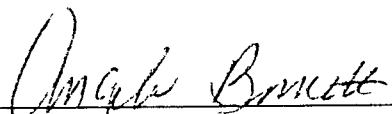
Appellant.

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

Public Defender for the Second Judicial Circuit

410 Barnwell Avenue N.W.
Post Office Drawer 2247
Aiken, South Carolina 29802

De Grant Gibbons, Circuit Public Defender

July 15, 2014

Bobby L. Wood SCDC #00338846
Kirkland Reception & Evaluation Center
4344 Broad River Road
Columbia, South Carolina 29210

re: State v. Bobby Wood
Appeal Case Number 2014-001382

Dear Mr. Wood.

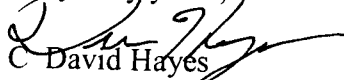
Under Rule 203(B) (iv) of the South Carolina Rules of Appellate Procedure, an appeal from a guilty plea may be dismissed unless you can identify issues that were preserved for appeal or make a sufficient showing to the Court that there are issues which can be argued on appeal. I do not believe that there were any issues preserved for appeal, however, I did file an appeal when I received the faxed request and petitioned the Court to accept the appeal because it was late. I have also received paper work filed by the Attorney General's Office requesting the appeal be dismissed for missing the filing dead line. I have enclosed a copy of the papers I have received.

You must now contact the appellate court yourself in writing to advise the Court of any issues you feel you may have on appeal.

You must send a written statement to the South Carolina Court of Appeals within twenty (20) days from the date of this letter to inform the Court of any argument you have that there are issues preserved for appeal. Your statement should include your case number as shown above. The address of the Court is:

South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Very truly yours,


David Hayes
Assistant Public Defender

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JUL 18 2014

SC Court of Appeals

Enclosure

cc. V. Claire Allen, Deputy Clerk of the SC Court of Appeals

Fax: (803) 642-1739

Telephone: (803) 642-1732



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

July 09, 2014

Mr. Charles David Hayes, Esquire
PO Drawer 2247
Aiken SC 29802

Re: The State v. Bobby L. Wood, Jr.
Appellate Case No. 2014-001382

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JUL 18 2014

SC Court of Appeals

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2014-04-15-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

The caption for this appeal should appear as follows:

The State, Respondent,

v.

Bobby L. Wood, Jr., Appellant.

Please do not hesitate to contact this office if you have any questions or concerns regarding this appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: David Warren Miller, Esquire
Salley W. Elliott, Esquire
Robert Michael Dudek, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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July 09, 2014

Mr. Charles David Hayes, Esquire
PO Drawer 2247
Aiken SC 29802

Re: The State v. Bobby L. Wood, Jr.
Appellate Case No. 2014-001382

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SC Court of Appeals

Dear Counsel:

This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: David Warren Miller, Esquire
Salley W. Elliott, Esquire
Robert Michael Dudek, Esquire



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SC Court of Appeals

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

Second Judicial Circuit
Public Defender
P.O. Box 2247
Aiken, South Carolina 29802

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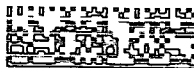
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SC Court of Appeals

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V Claire Allen
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