

The Supreme Court of South Carolina

Antonio Boykin, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-001295

ORDER

On June 12, 2014, petitioner filed a notice of appeal stating he was appealing an order of dismissal signed by the circuit court judge on February 11, 2014, which he never received. However, petitioner failed to provide proof of service of the notice of appeal. In addition, the final order, a copy of which was obtained by the Clerk of Court's office, indicates petitioner did not file a response to the conditional order of dismissal. Accordingly, by order dated June 19, 2014, the notice of appeal was dismissed.

Petitioner has filed an objection to the order and a petition for rehearing, arguing he received a copy of the final order of dismissal from this Court on June 23, 2014, and should have thirty days from that date to serve and file a notice of appeal. Accordingly, he has submitted a new notice of appeal from the order dated February 11, 2014, asserting he received written notice of entry of the order on June 23, 2014 from this Court. He has provided proof of service of the notice of appeal on opposing counsel. Petitioner also asserts he filed a timely response to the conditional order of dismissal. Petitioner has provided a copy of a document entitled "Response in Opposition to Conditional Order of Dismissal and [Respondent's] Motion to Dismiss" with a stamped filed date of December 16, 2013.

The new notice of appeal, which includes proof of service, is sufficient to overcome that basis for dismissal. However, petitioner has failed to cure the second basis for dismissal - the finding in the circuit court order that petitioner did not file a response to the conditional order of dismissal. Once petitioner received a

copy of the final order of dismissal in June stating he did not file a response to the conditional order of dismissal, he was required to file a Rule 59(e), SCRCP, motion requesting the error be corrected. Instead, he filed a new notice of appeal in this Court. Accordingly, the alternate basis for dismissing the original notice of appeal - failure to file a response to the conditional order of dismissal - has not been corrected. We therefore deny the petition for rehearing and dismiss the new notice of appeal pursuant to *Edith v. State*, 369 S.C. 408, 632 S.E.2d 844 (2006).



George O'Connor C.J.
John D. Sikes J.
W. Brent Brasher J.
John F. Applegate J.
James E. Hearn J.

Columbia, South Carolina

August 21, 2014

cc:
Daniel Francis Gourley, II, Esquire
Antonio Lamont Boykin, #332153