

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 14 2014

Appeal from Sumter County
The Honorable W. Jeffrey Young, Circuit Court Judge

SC Court of Appeals

Appellate Case No: 2014-001597

THE STATE,

Respondent,

vs.

JOHN WHITE,

Appellant.

MOTION TO DISMISS APPEAL

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

I.

On May 28, 2014, Appellant submitted a Petition for Writ of State Habeas Corpus in the Court of Common Pleas in the Third Judicial Circuit. Additionally, Appellant submitted a motion and affidavit to proceed in forma pauperis. The motion to proceed in forma pauperis was denied by the Honorable W. Jeffrey Young on June 25, 2014. Subsequently, Appellant filed a Notice of Appeal on or about July 18, 2014 appealing “the decision of Sumter County denied to in forma pauperis.” By Order filed September 18, 2014, the South Carolina Court of Appeals granted

Appellants motion to proceed in forma pauperis and ordered Appellant to submit his initial brief within thirty days.

II.

Appellant served a pro se notice of appeal on or about July 18, 2014.

III.

Pursuant to the long-standing rules of appellate procedure, a notice of appeal from the Court of Common Pleas must be served upon *all* respondents within thirty days (30) days of entry of the order or judgment. See Rules 203(b)(1), 262(b), SCACR. (emphasis added). 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). Respondent submits that Appellant failed to timely serve a notice of appeal within thirty (30) days of the order or judgment on Respondent.

IV.

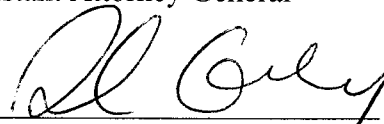
Appellant's notice of appeal should have been served upon Respondent on or before July 25, 2014. Appellant has not served Respondent with the Notice of Appeal. The failure of Appellant to timely serve written notice of appeal upon the State deprives this Court of jurisdiction over this appeal and entitles 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

DANIEL GOURLEY
Assistant Attorney General

BY: 

DANIEL GOURLEY
S.C. Bar No: 100934

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ATTORNEYS FOR RESPONDENT

October 14, 2014



ALAN WILSON
ATTORNEY GENERAL

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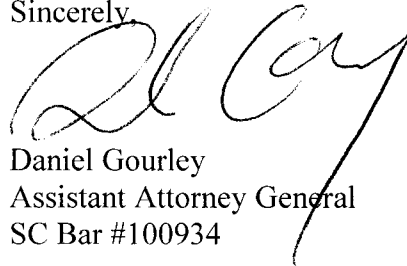
The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: John White v. State of South Carolina
Appellate Case No. 2014-001597

Dear Ms. Kitchings:

Enclosed please find the original and two copies (2) of the **Motion to Dismiss Appeal** in the above mentioned case.

Sincerely,



Daniel Gourley
Assistant Attorney General
SC Bar #100934

DG/ck

cc: John White, #80622, *pro se*