

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

OCT 20 2014

\_\_\_\_\_  
Appeal from Lexington County  
The Honorable Doyet A. Early, III, Circuit Court Judge

**SC Court of Appeals**

\_\_\_\_\_  
Appellate Case No: 2014-001942  
\_\_\_\_\_

THE STATE,

Respondent,

vs.

JERRY GALLOWAY,

Appellant.

\_\_\_\_\_  
**MOTION TO DISMISS APPEAL**  
\_\_\_\_\_

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

I.

On August 26, 2014, Appellant pled guilty to Manufacturing Methamphetamine 3<sup>rd</sup> offense (2014-GS-32-01956) and Unlawful Manufacturing of Methamphetamine in the presence of a Minor child (2014-GS-32-02599) and was sentenced that same date.

II.

Appellant served notice of appeal on September 9, 2014.

III.

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.

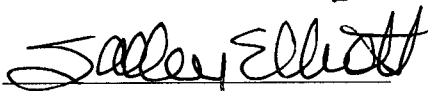
Appellant's notice of appeal should have been served upon Respondent on or before September 5, 2014 and was not served until September 9, 2014. The failure of Appellant to timely serve written notice of appeal upon the State deprives this Court of jurisdiction over this appeal and entitles Respondent 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

October 20, 2014

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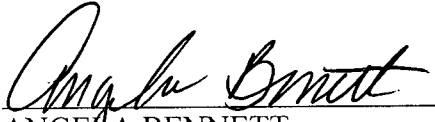
Appellant.

**PROOF OF SERVICE**

I, Angela Bennett, certify that I have served the Motion to Dismiss Appeal on appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney, Thomas E. Shealy, Assistant Public Defender, 407 ½ W. Main Street, Lexington, SC 29072 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 20<sup>th</sup> day of October, 2014.

  
ANGELA BENNETT  
Administrative Assistant

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



ALAN WILSON  
ATTORNEY GENERAL

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**SC Court of Appeals**

October 20, 2014

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

Re: The State v. Jerry Galloway  
Appellate Case N: 2014-001942

Dear Mr. Kitchings:

Enclosed please find the original and six copies of the 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: Thomas E. Shealy, Assistant Public Defender  
Robert M. Dudek, Esquire  
Ms. Trisha Allen