

The Supreme Court of South Carolina

Maria I. Rodriguez, Petitioner,

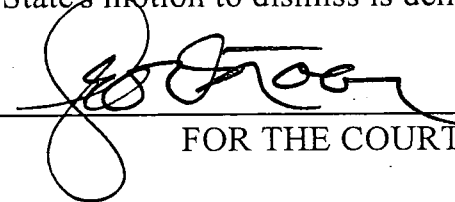
v.

State of South Carolina, Respondent.

Appellate Case No. 2014-002389

ORDER

Petitioner's application for post-conviction relief (PCR) was denied by order dated March 9, 2012, and filed March 30, 2012. On October 27, 2014, petitioner filed a pro se notice of appeal and an "Austin Petition for Writ of Certiorari." The Clerk of Court requested Paul Archer, who represented petitioner before the circuit court in this matter, advise the Court of the date on which he received written notice of entry of the order of dismissal. Mr. Archer has informed the Court he received written notice of entry of the order of dismissal on April 22, 2012. In the meantime, the State filed a motion to dismiss the pro se notice of appeal pursuant to *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989) since petitioner was represented by counsel. Because the notice of appeal was not timely served,¹ it must be dismissed. *See Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985) (timely service of the notice of appeal is a jurisdictional requirement and this Court has no authority to extend or expand the time in which the notice must be served). However, we dismiss the notice without prejudice to petitioner's ability to file another PCR application in the circuit court pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). The State's motion to dismiss is denied as moot.



FOR THE COURT C.J.

¹ See Rule 77(d), SCRCP (when a PCR applicant is represented by counsel, service of the order of dismissal shall be made solely on the attorney); Rule 243(b), SCACR (notice of appeal shall be served within thirty days after receipt of written notice of entry of the order).

Columbia, South Carolina

December 10, 2014

cc:

Christina Catoe Bigelow, Esquire

Paul Archer, Esquire

Maria L. Rodriguez, #332544