

The Supreme Court of South Carolina

Kevin Davis, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001609

Lower Court Case No. 2013-CP-40-02226

ORDER

This Court received a letter from petitioner stating he "was granted a notice of appeal on June 3, 2015, [which] petitioner received on June 17, 2015." In the letter, petitioner requested an extension of time. Petitioner was notified, by letter dated July 10, 2015, that this Court had no record of a notice of appeal being filed in this matter. Petitioner was instructed that if a notice of appeal had been timely served, he would need to immediately provide this Court with a copy of the notice of appeal along with a proof of service of the notice of appeal and a copy of the order(s) on appeal.

Petitioner responded by way of letter received July 23, 2015, in which he indicated he was providing a copy of the order and notice of appeal. While petitioner provided a copy of the Final Order of Dismissal, he failed to provide a copy of the notice of appeal, or more importantly, proof of timely service of the notice of appeal. Accordingly, this matter is not properly before the Court. Rule 203, SCACR (service and filing of notice of appeal); Rule 243(b), SCACR (service and filing of notice of appeal); *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985)(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 of appeal must be served).

Moreover, the Final Order of Dismissal states petitioner did not file a response in the circuit court to the Conditional Order of Dismissal. Accordingly, petitioner is precluded from filing an appeal in this matter. *Edith v. State*, 369 S.C. 408, 632

S.E.2d 844 (2006)(a final order of dismissal issued as a result of a post-conviction relief applicant's failure to avail himself of the opportunity to reply to a conditional order of dismissal is not appealable).

For the reasons stated above, this matter is dismissed.



J.

FOR THE COURT

Columbia, South Carolina

August 12, 2015

cc:

James Clayton Mitchell, III, Esquire

Kevin Davis, #308569