

The Supreme Court of South Carolina

David E. Gregg, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001797

Lower Court Case No. 2011CP4203521

ORDER

In this post-conviction relief case, the final order is dated July 3, 2013, and was filed with the clerk of the circuit court on July 8, 2013. On August 1, 2013, the clerk of the circuit court filed a notice of appeal from petitioner. This notice of appeal, which is dated July 22, 2013 and is captioned as being in the South Carolina Court of Appeals, states that the appeal is from the July 3, 2013, final order. This Court can find no record that a copy of this notice of appeal was received by either this Court or the South Carolina Court of Appeals prior to August 24, 2015.

On August 24, 2015, this Court received a petition for a belated appeal from petitioner. This petition has been construed as a motion to allow the late filing of the notice of appeal. The motion is granted.

Under Rules 243(b) and 203(b)(1) of the South Carolina Appellate Court Rules (SCACR), petitioner had to serve the notice of appeal on opposing counsel within thirty (30) days of receiving written notice of entry of the final order. The timely service of the notice of appeal is a jurisdictional requirement, and the time to serve the notice of appeal cannot be extended. *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."); Rule 263(b), SCACR ("The time prescribed by these Rules

for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court.").

In the present case, the notice of appeal is dated July 22, 2013, and the proof of service shows that the notice of appeal was not served until September 2, 2015. Since petitioner has failed to establish that the notice of appeal has been timely served on opposing counsel, the notice of appeal is dismissed. The remittitur will be sent as provided by Rule 221, SCACR.




C.J.
FOR THE COURT

Columbia, South Carolina
September 11, 2015

cc: Alicia A. Olive, Esquire
Mr. David Eugene Gregg, #296199