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AUG 26 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
Larry Hyman, Circuit Court Judge

Appellate Case No: 2014-002775

THE STATE,

Respondent,

vs.

DAMEON MYERS,

Petitioner.

MOTION TO DISMISS APPEAL AND REJECT INITIAL BRIEF OF APPELLANT

Respondent, through its undersigned counsel, moving this Court to dismiss Appellant's pro se appeal, would respectfully show unto this Court as follows:

I.

Appellant was indicted in Georgetown County for possession with intent to distribute crack cocaine (2002-GS-22-862), possession of marijuana (2002-GS-22-864), and failure to stop for a blue light (2002-GS-22-861). The matters were called for trial. Appellant was tried in his absence, was found guilty, and was sentenced on December 5, 2002 to incarceration for a period of three years for failure to stop, twenty (20) years for possession with intent to distribute crack

cocaine, and one year for possession of marijuana. Appellant's sentences were sealed. On October 17, 2011, Appellant was brought before the Honorable Steven H. John who unsealed and published the sentences. Judge John declined to alter the sentences.

Appellant appealed and this Court dismissed Appellant's appeal was dismissed by this Court.

II.

Appellant thereafter filed a "Writ of Error Coram Nobis and a demand for Dismissal for Failure to State Proper Jurisdiction and Venue" in the Georgetown County Court of General Sessions. A hearing into the matter was convened on December 5, 2013 before the Honorable Larry Hyman.¹ After due consideration, Judge Hyman issued an order denying Appellant's writ/motion. The order was dated August 12, 2014 and was filed by the Georgetown County Clerk of Court on the same date.

V.

A document signed by Loushonda Myers on behalf of Appellant was served and filed on September 7, 2014. Ms. Myers is not licensed to practice law.² It appears this Court is treating the document as a notice of appeal. The certificate of service for this document states Ms. Myers served the prosecutor with the document on September 7, 2014. A second document dated September 21, 2014 was signed by Appellant. The certificate of service for this second document states that Dameon Myers served the prosecutor with the document on September 21, 2014. It appears this Court is treating the second document as a second notice of appeal. The documents

¹ Appellant filed notice of appeal from the hearing and before a formal, written order was issued. An order filed May 19, 2014 was issued by this Court dismissing the appeal as premature. The case was remitted on June 5, 2015. See Appellate Case Number 2014-000686.

² See State v. Loushonda Myers, Appellate Case Number 2014-002776.

state that Dameon Myers received Judge Hyman's order but does not provide the date he received written notice of entry of the order.

By letter dated April 16, 2015, this Court notified Appellant that his appeal was deficient in that he failed to provide the date he received written notice of the order he is appealing. This Court provided Appellant ten (10) days to correct this deficiency to avoid dismissal of the appeal. Respondent has not received a response to this Court's request from Appellant.

However, by letter dated April 27, 2015, Appellant thereafter notified the Court that he received a copy of the transcript. The enclosed letter from the court reporter reveals that the transcript was mailed to Appellant on March 1, 2015. On May 28, 2015, he also filed a motion for an extension of time to file and serve his initial brief. By letter dated June 5, 2015, this Court acknowledged receipt of the request for an extension of time to file and serve Appellant's initial brief and designation of matter and indicated it would act on the extension request only when the Court received the information requested in April respecting the date Appellant received written notice of entry of the order being appealed.

Appellant again failed to respond to this Court's request but filed and served the Initial Brief of Appellant on June 25, 2015, almost 60 days late from the date he corresponded with the Court to advise that he was in receipt of the transcript.

IV.

Respondent moves this Court to dismiss Appellant's appeal because Appellant failed to show that he timely served Respondent with the notice of appeal and moves this Court to reject Appellant's brief as not timely filed and served. The rule governing initiation and perfection of appeals requires, in pertinent part, that an appellant serve notice of appeal from the court of

general sessions on all respondents no later than ten (10) days after receipt of written notice of entry of the order. Rule 203(b) (2), SCACR. The appellate court rule respecting the content of the notice of appeal requires an appellant to state in the notice of appeal the date the appellant received notice of the order being appealed. The rule specifically states that information about this date is necessary to determine the timeliness of the appeal. Rule 203(e) (1) (C), SCACR. The appellate court rules also require Appellant to file and serve his initial brief and designation of matter within thirty (30) days after receiving the transcript. Rule 208(a) (1), SCACR. Appellant has not complied with the appellate court rules governing perfection of his appeal and filing of his initial brief or with this Court's unequivocal, repeated requests for information.

The requirement of timely service of the notice of appeal is jurisdictional. If an appellant misses the deadline for serving the notice of appeal, the appellate court lacks jurisdiction to consider the appeal and has no discretion to extend or ignore the deadline for serving the notice of appeal. USAA Property and Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008); 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). This requirement is strictly construed. The State may not consent to appellate jurisdiction if the appealing party fails to serve the notice of appeal in a timely manner because parties may not consent to jurisdiction if it is not properly acquired. Tatnall v. Gardner, 350 S.C. 135, 564 S.E.2d 377 (Ct. App. 2002); Hunter v. Boyd, 203 S.C. 518, 525, 28 S.E.2d 412, 416 (1943).

The order Appellant appeals was dated and filed on August 12, 2014. A document considered by this Court as a notice of appeal appears to have been signed and submitted on September 7, 2014, by someone other than Appellant or an attorney licensed to practice law. As

such, it cannot be accepted. Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (1980). Even if the September 7, 2014, document can be accepted as a valid filing for Appellant, there is still no showing that it was timely served. Moreover, the pro se notice of appeal signed and served by Appellant was not served until September 21, 2015. Again, Appellant fails to show this document was timely served as a notice of appeal within ten (10) days after notice of entry of the order Appellant appeals.

Also, Appellant failed twice to provide this Court with the date he received written notice of the order he appeals after clear requests from this Court. Appellant simply has not established timely service of the notice of appeal. Therefore, the appeal must be dismissed. See Rule 231 (a), SCACR; see also Rule 260, SCACR (“Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal”); Henning v. Kaye, 307 S.C. 436, 415 S.E.2d 415 S.E.2d 794 (1992) (appellate court rules are not technicalities but provide for orderly processing of appeals).

V.

Respondent also moves this Court to reject Appellant’s initial brief dated June 25, 2015. Even accepting the date of Appellant’s April 27, 2015, letter as the date Appellant received the transcript and ignoring the court reporter’s letter mailing the transcript on March 1, 2015, the initial brief was not filed in compliance with the appellate court rules and must be rejected for failure to timely file and serve the brief.


WHEREFORE, Respondent respectfully prays that this Court dismiss Appellant’s pro se appeal for Appellant’s failure to establish that he timely served the notice of 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

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ATTORNEYS FOR RESPONDENT

August 26, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County
The Honorable Larry Hyman., Presiding Judge

Appellate Case No: 2014-002775

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SC Court of Appeals

THE STATE,

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vs.

DAMEON MYERS,


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 Dameon Myers, #279666, Lieber Correctional Inst. P.O. Box 205, Ridgeville, SC 29472

I further certify that all parties required by Rule to be served have been served.

This 26th day of August, 2015.



ANGELA BENNETT
Administrative Assistant

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



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

August 26, 2015

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

Re: The State v. Dameon Myers
Appellate Case No: 2014-002775

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion to Dismiss 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: Dameon Myers, #279666
Ms. Trisha Allen