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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of General Sessions
The Honorable Robert E. Hood, Circuit Court Judge

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NOV 23 2015

SC Court of Appeals

Appellate Case No: 2015-002209

THE STATE,

Respondent,

vs.

ROBERT BELTON,

Appellant.

MOTION TO DISMISS APPEAL

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

I.

In his pro se notice of appeal, Appellant states that he entered a guilty plea and was sentenced on September 17, 2015. He thereafter forwarded a pro se notice of appeal dated October 21, 2015 and which was filed by this Court on October 22, 2015. No proof of service accompanied the notice of appeal and Appellant states only that he sent the notice of appeal to the Richland County Clerk of Court. The undersigned became aware of the appeal only through

copies of letters this Court sent to Appellant's trial attorney on November 2, 2015.

II.

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 Rule 203(b) (2), SCACR; Rule 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. 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).

III.

Appellant's notice of appeal should have been served upon Respondent on or before September 28, 2015 and was not filed until October 22, 2015 and appears not to have been served on opposing counsel as required. 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.

IV.

Moreover, Appellant states that he is appealing from a guilty plea but fails to show that any issue was preserved during the guilty plea to allow for appellate review pursuant to Rule 203(d)(1)(B)(iv), SCACR. The appeal must be dismissed for lack of the appropriate explanation.

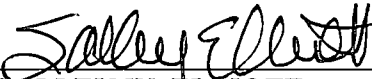
WHEREFORE, Respondent respectfully prays that this Court dismiss the appeal; that the time limits for this appeal be held in abeyance until this Court's disposition of this motion; and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

BY: 
SALLEY W. ELLIOTT
S.C. Bar No: 1871

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(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 23, 2015

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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, Victor K. Li, Esquire, P.O. Box 7284, Columbia, South Carolina, 29202 and Mr. Robert Belton, #200509, Kirkland Correctional Inst., 4344 Broad River Road, Columbia, SC 29210.

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

This 23rd day of November, 2015.


ANGELA BENNETT
Administrative Assistant

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



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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

November 23, 2015

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

Re: The State v. Robert Belton
Appellate Case No: 2015-002209

Dear Ms. 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: Victor K. Li, Esquire
Robert Belton, #200509
Ms. Trisha Allen