

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
Court of Common Pleas
The Honorable Perry M. Buckner, Circuit Court Judge

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NOV 23 2015

Appellate Case No: 2015-000946

SC Court of Appeals

RILEY BROWN,

Appellant,

vs.

THE STATE,

Respondent.

MOTION TO DISMISS APPEAL

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

I.

By order dated and filed on April 20, 2015, the Honorable Perry M. Buckner affirmed the judgment of a magistrate arising from a traffic ticket. Appellant states in the pro se notice of appeal from Judge Buckner's order that he received written notice of entry of the order on April 22, 2015. The notice of appeal is dated May 4, 2015. Appellant attached a certificate of service stating that he served the notice of appeal on Judge Buckner and on Court Reporter Rebecca Hill.

He attaches the postal verification of the service.

II.

Rule 203(b) (1), SCACR required Appellant to serve the notice of appeal on all respondents. Judge Buckner and Court Reporter Hill were not respondents to the action below involving Appellant. Appellant failed to properly serve the notice of appeal as required by our appellate court rules. This Court corresponded with Appellant on August 8, 2105, requesting a copy of a proof of service showing the correct counsel for respondent was served. Appellant was asked to provide the information within ten days of the letter. The undersigned has not received a copy of a response from Appellant.

III.

Pursuant to the long-standing rules of appellate procedure, a notice of appeal must be timely served. See Rule 203(b) (1), SCACR; Rule 262(b), SCACR. Timely service of the notice of appeal 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).

IV.

Appellant's notice of appeal should have been served upon the correct counsel for

Respondent on or before May 22, 2015 and has not been properly served. The failure of Appellant to timely serve written notice of appeal upon the proper Respondent 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.

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.

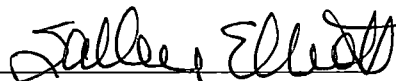
Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ISAAC M. STONE
Solicitor, Fourteenth Judicial Circuit

BY:


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

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Columbia, SC 29211
(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 Mr. Riley Brown, P.O. Box 4113, Columbia, South Carolina 29240

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: Riley Brown v. The State
Appellate Case No: 2015-00946

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: Riley Brown
Ms. Trisha Allen