

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of General Sessions

The Honorable Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2015-002478

RECEIVED

JAN 12 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

FALONZO RAKEEM RAHMON DASH,

APPELLANT.

RETURN TO MOTION TO REINSTATE APPEAL

Respondent ("the State"), through its undersigned counsel, would respectfully show unto the Court as follows:

I.

On October 28, 2015, Appellant was convicted under indictment numbers 2013-GS-08-01429 and 2013-GS-08-00140, following a trial. The same day he was sentenced by the Honorable Kristi L. Harrington to a term of imprisonment. On November 15, 2015, Melisa W. Gay, Esquire, filed a Notice of Appeal on Appellant's behalf with the Berkeley County Clerk of Court. On November 20, 2015, Ms. Gay served the Notice of Appeal on Assistant Solicitor Adrian Dejeue of the Ninth Circuit Solicitor's Office. The same day she submitted the Notice of Appeal and Proof of Service to this Court for filing and it was assigned Appellate Case No. 2015-002478.

CONFIDENTIAL

SECRET

II.

In an Order filed December 16, 2015, this Court dismissed Appellant's appeal for failure to serve the notice of appeal in a timely manner as required by Rule 203(b)(2) of the South Carolina Appellate Court Rules. Appellant has now filed a December 24, 2015, "Motion to Reinstate Appeal and Motion to File Notice of Intent to Appeal Out of Time." The Motion was served on Assistant Solicitor Matthew Ozment of the Ninth Circuit Solicitor's Office and Probation Agent Kiawanah Parson of the Berkeley County office of the South Carolina Department of Probation, Parole and Pardon Services. A copy was received by the South Carolina Office of the Attorney General on January 7, 2016, and this Return follows.

III.

Pursuant to Rule 203(b)(2), SCACR, an appellant must serve a notice of appeal on all respondents within ten days after the sentence is imposed in a criminal case. The time period for filing a notice of appeal cannot be extended or shortened by an appellate court. See Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rule 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.") (emphasis added); see also Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) ("Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.").

IV.

Respondent appreciates Appellant's argument in regard to his desire to appeal and judicial economy; however, because no proper notice of appeal was served within ten days of Appellant's conviction and the trial court's imposition of sentence, this Court has no jurisdiction over

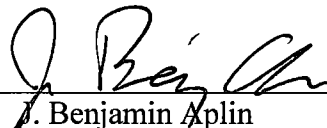
Appellant's case and must dismiss his appeal. See Hill v. South Carolina Dept. of Health and Environmental Control, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) ("The service of a notice of appeal is a **jurisdictional requirement**, and the time for service may not be extended by this Court."); Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5, 24 S.E.2d 416, 418 (Ct. App. 1999) (in a civil case, pointing out that Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of jurisdiction "and results in dismissal of the appeal"); see also Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) ("[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.").

WHEREFORE, the State respectfully requests that this Court deny Appellant's motion to reinstate his appeal following dismissal for a lack of jurisdiction.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Interim Senior Assistant Deputy Attorney General

BY: 

J. Benjamin Aplin
S.C. Bar #8729

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

ATTORNEYS FOR RESPONDENT

January 12, 2016

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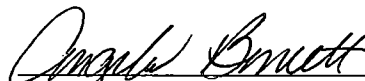
APPELLANT.

PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Return to Motion to Reinstate Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Melisa W. Gay, Esquire
Post Office Box 2144
Mt. Pleasant, SC 29465

I further certify that all parties required by Rule to be served have been served. This 12th day of January, 2016.



ANGELA S. BENNETT
Legal Assistant

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



ALAN WILSON
ATTORNEY GENERAL

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SC Court of Appeals

January 12, 2016

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

RE: State v. Falonzo Rakeem Rahmon Dash – Appellate Case No. 2015-002478

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Return to Motion to Reinstate Appeal, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

J. Benjamin Aplin
Interim Senior Assistant Deputy Attorney General
Bar Number 8729

Enclosures

cc: Melisa W. Gay, Esquire
Robert M. Dudek, Chief Appellate Defender
Matthew R. Ozment, Assistant Solicitor
David Fashion, Berkeley County AIC, DPPPS
Victim Services