

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM HORRY COUNTY
Court of Common Pleas

FEB 09 2016

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

S.C. SUPREME COURT

Case No. 2014-CP-26-1206

Christopher Ryan Bell, #357083,
Respondent,

v.

State of South Carolina, Petitioner.

MOTION TO DISMISS APPEAL

Respondent Christopher Bell, through his undersigned counsel, moves this Court to dismiss the above referenced appeal based on the State's failure to timely file a notice of appeal.

The State has filed a Notice of Appeal in the above referenced case, along with an accompanying Certificate of Service dated January 6, 2016. In the State's Notice of Appeal, the State concedes that: 1) the Honorable G. Thomas Cooper signed the Order granting Post-Conviction Relief in this case on September 18, 2015; and 2) the Order was filed with the Clerk of Court on September 23, 2015. The Attorney General filed a Notice of Appeal more than three months after the Order was signed and filed with the Clerk of Court.

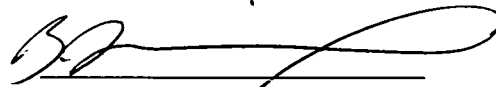
The State claims that it first received notice of the Order on December 15, 2015, upon seeing the Order in their file without accompanying letter or anything to reflect the date that it was received by their office. The State further claims to have found an email dated December 5, 2015, that had the Order attached to it. The State has not provided the Court or Respondent with a copy of this email.

The Clerk of Court filed and stamped the Order on September 23, 2015, and further stamped the Order "copies mailed," presumably on the same date. Respondent asserts that the Attorney General received the Order soon after the Order was clocked and stamped "copies mailed," in September of 2015, and that the Order was received by the prior assistant attorney general assigned to this case, Joshua L. Thomas, who failed to file a timely Notice of Appeal. Mr. Thomas was subsequently replaced by assistant attorney general Jessica Kinard, who was unaware of the Order until she discovered it in the file on December 15, 2015. The actions or inaction of the prior assistant attorney general must be imputed to the State, regardless of confusion or turn-over within their office – both attorneys are employees of the Attorney General's Office, and both attorneys are acting on behalf of the State.

The Appellate Rules state that "[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." The Order was found by the incoming assistant attorney general, in the outgoing assistant attorney general's file, and it was signed, filed, clocked, and stamped "copies mailed" in September of 2015, more than three months before the Attorney General's Office filed their Notice of Appeal.

Timely service of the Notice of Appeal is a jurisdictional requirement, and this Court has no authority to expand the time within which the notice must be served. State v. Hinson, 303 S.C. 92 (1990); Mears v. Mears, 287 S.C. 168 (1985). Furthermore, no post-trial motions were filed in this case and there is no legal basis to extend the time limit for service of the Notice of Appeal.

For the above-stated reasons, Respondent requests that this Court dismiss this appeal as untimely under SCACR 203, and requests any further relief that this Court feels is just and proper.



Bobby G. Frederick
Frederick Law Office
Attorney for the Respondent
1053 London Street
Myrtle Beach, S.C. 29577
828-736-8773
bfrederick@grandstrandlaw.com

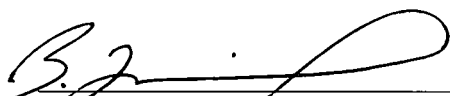
February 5, 2016.

CERTIFICATE OF SERVICE

I, Bobby G. Frederick, certify that I have served the Motion to Dismiss Appeal in the above-referenced case, by U.S. mail, to:

Jessica E. Kinard
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

On February 5, 2016.



Bobby G. Frederick
Attorney for Respondent

RECEIVED

FEB 09 2016

S.C. SUPREME COURT

Frederick Law Office

Bobby G. Frederick

1053 London Street
Myrtle Beach, SC 29577
Phone: 828-736-8773
Fax: 843-444-6133
bfrederick@grandstrandlaw.com

February 4, 2016

Supreme Court of South Carolina
Clerk of Court
P.O. Box 11330
Columbia, SC 29211

RECEIVED

FEB 09 2016

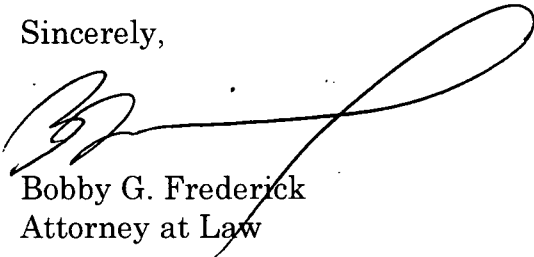
S.C. SUPREME COURT

RE: Christopher Bell v. State of South Carolina
Case No.: 2014-CP-26-1206

Enclosed are an original and six copies of Respondent's Motion to Dismiss the above referenced appeal.

Feel free to contact me should you have any questions or concerns.

Sincerely,



Bobby G. Frederick
Attorney at Law

cc: Jessica Kinard; Assistant Attorney General

Frederick Law Office
1653 London Street
Myrtle Beach, S.C. 29577



1003



29211

U.S. POSTAGE
PAID
WHITTIER, NC
FEB 05, '18
AMOUNT
\$2.94
00142445-03

Supreme Court of South Carolina
Clerk of Court
P. O. Box 11330
Columbia, SC 29211

USPS TRACKING NUMBER



9500 1114 2445 6036 4895 98

