

THE STATE OF SOUTH CAROLINA
In the Appellate Court

RECEIVED

APR 07 2016

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Robin B. Stilwell, Circuit Court Judge

Case No(s): 1979-GS-23-1758

The State,

Respondent.

v.

David Wilkins Ross,

Appellant.

MOTION TO ALLOW OUT-OF-TIME FILING OF APPEAL

David Wilkins Ross asks this Court to accept the filing of his notice of intent to appeal out-of-time. It is undisputed that Mr. Ross filed his notice of appeal with the Greenville County Clerk of Court on November 30, 2015, appealing from the Circuit Court's ruling issued on November 23, 2015. It is also undisputed that Mr. Ross timely and properly served the S.C. Department of Probation, Pardon and Parole Services (the proof of service is attached to this motion). General Counsel for the Department of Probation, Pardon and Parole Services, Matthew Buchanan, does not oppose this motion.

Mr. Ross was convicted of Lewd Act on a Child on July 25, 1979. He was subsequently convicted of Sex Offender Registry Violation 1st offense on January 19, 2011, which, pursuant to Jessie's Law, S.C. Code of Laws § 23-3-540 *et seq.*, required that he submit to active GPS monitoring. The S.C. Department of Probation, Pardon & Parole Services began supervising Mr. Ross's GPS monitoring. However, the department did not, at the time, obtain a court order

directing Mr. Ross to submit to GPS monitoring.

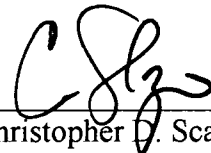
Mr. Ross was charged with the criminal offense of Wilful Violation of the Terms of Electronic Monitoring on November 11, 2014. Subsequent to this arrest, the department sought a hearing in Circuit Court for the purpose of having the court issue an order that Mr. Ross submit to GPS monitoring. That hearing was held on October 26, 2015 and the final written order directing Mr. Ross to submit to GPS monitoring was issued on November 23, 2015.

Mr. Ross timely filed his Notice of Appeal with the Circuit Court on November 30, 2015 (a copy of the notice is attached to this motion) and timely mailed a copy to opposing counsel and to the Clerk of Court for the Court of Appeals.

It is undisputed that the Notice of Appeal was timely filed with the Circuit Court and that the notice was properly served, as well. Regardless of why the Appellate Court did not receive Mr. Ross's notice, it was meant to be timely filed with the Court of Appeals.

WHEREFORE, Mr. Ross respectfully asks this Court to allow for the late filing in his case and to accept his Appeal as now being timely filed.

Date: April 4, 2016



Christopher D. Scalzo, Esq.
Teal Johnson, Esq.
Greenville County Courthouse
Greenville, SC 29601
Attorneys for Appellant

Other Counsel of Record:
Matthew C. Buchanan, Esq.
S.C. Dept. Probation, Pardon & Parole Services
2221 Devine Street
Columbia, SC 29250

THE STATE OF SOUTH CAROLINA
In the Appellate Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Robin B. Stilwell, Circuit Court Judge

Case No(s): 1979-GS-23-1758

RECEIVED

APR 07 2016

SC Court of Appeals

The State,

Respondent.

v.

David Wilkins Ross,


Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to File Out of Time on the below listed respondent by depositing a copy of it in the United States Mail, postage prepaid, on April 4, 2016, addressed to:

Matthew C. Buchanan, Esq.
S.C. Department of Probation, Pardon & Parole
2221 Devine Street
Columbia, SC 29250

Greenville, SC
Date: April 4, 2016



Christopher D. Scalzo, Esq.
Teal Johnson, Esq.
Greenville County Courthouse
Greenville, SC 29601
Attorneys for Appellant