

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of General Sessions

The Honorable Perry M. Buckner, Circuit Court Judge

Appellate Case No. 2016-001624

RECEIVED

AUG 17 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

Daniel Glen Hieronymus,

APPELLANT.

**MOTION TO DISMISS APPEAL FOR
LACK OF JURISDICTION**

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

I.

On December 18, 2015, Daniel Glen Hieronymus (hereinafter "Appellant"), was served with Shellfish Ticket 22603. On March 15, 2016, Appellant exercised his right to a bench trial before the Honorable J. Reaves McLeod at the Colleton County Magistrate. Officer Tara M. Donahue of the Department of Health and Environmental Control (DHEC) represented the State and Nancy Bloodgood, Esquire, represented Appellant. On April 12, 2016, the court issued an order finding Appellant guilty and served the order on the parties that day.

On May 20, 2016, Appellant filed an untimely Notice of Appeal with the Colleton County Clerk of Court.¹ On June 30, 2016, the Honorable Perry M. Buckner, III, held a motion hearing in Colleton County. On July 7, 2016, Judge Bucker issued an order dismissing Appellant's appeal for being untimely filed. The Colleton County Clerk of Court filed the order on July 13, 2016.

On August 4, 2016, Appellant filed a Notice of Appeal in this Honorable Court. This motion to dismiss now follows.

II.

South Carolina Code 18-3-10 et.seq. sets forth the manner for appealing a conviction from Magistrate's Court. SC Code 18-3-30 specifically states "the Appellant, within ten days after sentence, shall file a Notice of Appeal with the Clerk of Court..." (emphasis added). Furthermore, it is well-settled that the Rules of Civil Procedure that allows service of a Notice of Appeal within 30 days of judgment does not apply to an appeal from a criminal conviction in Magistrate's Court. See *State v. Brown*, 344 S.C. 302 (2001), overruled on other grounds by *State v. Oxner*, 391 S.C. 132 (2011). See also *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, 413 S.C. 642 (2015) (holding that an e-mail from the Court with an attachment containing an order constitutes written entry and receipt of the decision for purposes of appeal); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008), ("[t]he requirement of service of the Notice of Appeal is jurisdictional, i.e. if a party misses the deadline, the appellate courts lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.")

In Appellant's case, there was not a proper notice of appeal within ten days after the conviction to the lower appellate court. As stated previously, the conviction was entered on April

¹ The underlying matter is a criminal matter. The order specifically found Appellant guilty of a misdemeanor pursuant to SC Code 44-1-150 and SC Code of Regulations 61-47. Further, the underlying matter is classified as a case type "criminal" on the public index.

12, 2016. On May 20, 2016, Appellant filed a Notice of Appeal with the Colleton County Clerk of Court. The Notice of Appeal in this case was filed in the Clerk of Court 28 days beyond the deadline.

III.


Since no proper notice of appeal was served and filed within ten days of Appellant's conviction, the lower appellate court had no jurisdiction over Appellant's case and had to dismiss his appeal for lack of jurisdiction. 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."). Since the lower appellate court did not have jurisdiction to hear Appellant's claims, this Honorable Court also lacks appellate jurisdiction.

WHEREFORE, the State respectfully requests that this Court dismiss Appellant's appeal for lack of appellate jurisdiction.

Respectfully submitted,

ALAN WILSON
Attorney General

NICOLE T. WETHERTON
Assistant Attorney General

BY: 
Nicole T. Wetherton
S.C. Bar #100500

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ATTORNEYS FOR RESPONDENT

August 17, 2016

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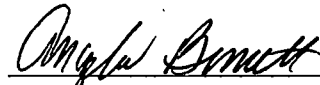
Daniel Glen Hieronymus,
APPELLANT.

PROOF OF SERVICE

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

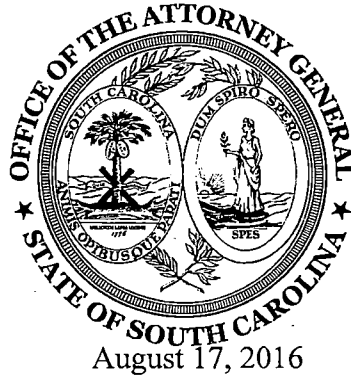
Nancy Bloodgood, Esquire
895 Island Park Drive, Suite 202
Charleston, SC 29492

I further certify that all parties required by Rule to be served have been served. This 17th day of August, 2016.



ANGELA BENNETT
Administrative Assistant

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(803) 734-3727



ALAN WILSON
SECURITIES COMMISSIONER

RECEIVED

AUG 17 2016

SC Court of Appeals

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

RE: State v. Daniel Glen Hieronymous – Appellate Case No. 2016-001624

Dear Ms. Kitchings:

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

Sincerely,

Nicole T. Wetherton
Assistant Attorney General
Bar Number 100500

Enclosures

cc: Nancy Bloodgood, Esquire