

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Spartanburg County  
The Honorable J. Derham Cole, Circuit Court Judge

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Appellate Case No. 2015-02407

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**RECEIVED**

AUG 26 2016

SC Court of Appeals

THE STATE,.....RESPONDENT

v.

THOMAS MARETT,.....APPELLANT

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**INITIAL BRIEF OF RESPONDENT**

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**Matthew Buchanan  
General Counsel**

**South Carolina Department of Probation,  
Parole and Pardon Services  
P.O. Box 50666  
Columbia, South Carolina 29250**

**ATTORNEY FOR RESPONDENT**

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**STATEMENT OF ISSUES ON APPEAL**

**Whether the probation court erred by ordering the appellant to pay restitution in the amount determined by the trial court when the appellant did not appeal the trial court's order of restitution?**

## STATEMENT OF THE CASE

On February 22, 2013, the appellant was indicted by the Spartanburg County Grand Jury for obtaining signature or property by false pretenses. The case was called to jury trial before the Honorable R. Keith Kelly on September 11, 2013. The appellant was found guilty and was sentenced to five years of imprisonment, suspended on the service of six months and five years probation. R\* Sentence Sheet. Also on that day, Judge Kelly signed an Order of Restitution requiring the appellant to pay \$2,321.40 as a condition of his sentence. R\* Order of Restitution.

The appellant appealed his conviction on three grounds: that the trial court erred in (1) denying his motion to dismiss the indictment, (2) denying his motion for a directed verdict, and (3) failing to charge the jury certain requested instructions. The South Carolina Court of Appeals affirmed the conviction on March 18, 2015 in an unpublished opinion. State v. Marett, Op. No. 2015-UP-149. The appellant did not appeal the Order of Restitution.

On October 13, 2014, agents with the South Carolina Department of Probation, Parole and Pardon Services issued a citation on the appellant for failure to pay the court-ordered restitution and other fees. The appellant appeared before the Honorable J. Derham Cole and explained to the court that he disagreed with the amount of restitution ordered by Judge Kelly after the trial. Judge Cole continued the appellant's probation and ordered that he pay the amount of restitution ordered by the trial court. Tr. p. 6, ll. 21-22.

As of the date of this appeal, the appellant has not made a single payment toward his restitution. \*R. Payment Record.

This appeal follows.

## ARGUMENT

**The probation court did not err when it ordered the appellant to pay restitution in the amount determined by the trial court because the appellant did not appeal the trial court's Order of Restitution.**

South Carolina law requires a hearing by a court to determine the restitution amounts when there is a loss to a victim in a crime. Upon conviction, the court “shall order the defendant make restitution or compensate the victim for any pecuniary damages.” S.C. Code §17-25-322(A) (1976).

In the instant case, the trial court issued an order making note of the requirements of S.C. Code §17-25-322 and ordering restitution in the amount of \$2,321.40 as a condition of his sentence. R\*Sentence Sheet. This order was signed on the same day as the trial where the appellant was convicted.

The appellant did not appeal this order, although it is clear he disagrees with it, and claims to not have had a restitution hearing. Tr. p. 6, l. 10.<sup>1</sup>

The South Carolina Rules of Appellate Practice require that a notice of appeal from the Court of General Sessions be served within ten days of the order or judgment. Rule 23(a) SCACR. The appellant did appeal his conviction, but he did not appeal the Order of Restitution.

“Our appellate court rules require a party intending to appeal to serve and file a notice of appeal.” State v. Devore, 416 S.C. 115 (Ct. App. 2016) (Citing Rule 203(a) SCACR).

This time limit is vital for the appellate courts to have jurisdiction over the matter. “The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to

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<sup>1</sup> Although the transcript of the probation hearing indicates that the appellant appealed the court's restitution order, this does not appear to be one of the issues considered on appeal in State v. Maret, Op. No. 2015-UP-149.

'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).

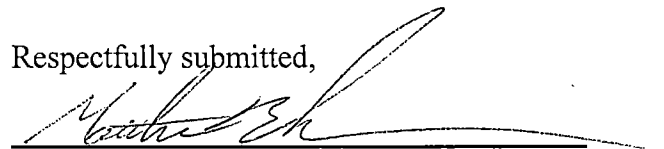
While timely post-trial motions may stay this ten-day time limit, this will restart upon the entry and receipt of the final order ruling on those motions. Rule 29(a), SCRCrimP. Here, even if the appellant's appeal was to be considered staying the time limit to appeal Judge Kelly's Order of Restitution, the time to file notice of appeal would have elapsed ten days after the Court of Appeals' ruling on March 18, 2015. The issue of the restitution hearing pursuant to S.C. Code §17-25-322(A) was not raised by appellant until the hearing before Judge Cole on October 16, 2015, clearly beyond the ten-day limit.

Consequently, the Order of Restitution was not timely appealed, and therefore the trial court's order stands. The probation court properly ordered the appellant to pay the amount as ordered by the trial court.

### **CONCLUSION**

For all of the foregoing reasons, the State respectfully requests that the order of the probation violation court requiring payment of the restitution be upheld.

Respectfully submitted,



**Matthew Buchanan**  
**General Counsel**

South Carolina Department of Probation  
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P.O. Box 50666  
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Attorney for the Respondent

Columbia, South Carolina  
August 25, 2016

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**CERTIFICATE OF SERVICE**  
\_\_\_\_\_


I, Dawn Nichols, Executive Assistant, hereby certify that this 25<sup>th</sup> day of August, 2016, I served  
the following documents:

1. Initial Brief of Respondent and Designation of Matter; and
2. Certificate of Service.

by first class mail, postage prepaid as follows:

Tiffany Butler, Esquire  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, S.C. 29211-1589

I further certify that all parties required by Rule to be served have been served.

  
\_\_\_\_\_  
**Dawn Nichols**  
**Executive Assistant**  
South Carolina Department of  
Probation, Parole and Pardon Services  
P. O. Box 50666  
Columbia, South Carolina 29250

State of South Carolina  
Department of Probation, Parole and Pardon Services

NIKKI R. HALEY  
Governor



JERRY B. ADGER  
Director

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August 25, 2016

The Honorable Jenny Kitchings  
Clerk of the South Carolina Court of Appeals  
1015 Sumter Street- 5<sup>th</sup> Floor  
Columbia, South Carolina 29201

RE: State v. Thomas Marett

Dear Ms. Kitchings:

Please find enclosed the original and one of copy of Respondent's Initial Brief and Designation of Matter along with a certificate of Service in the above captioned case.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew C. Buchanan", with a long horizontal flourish extending to the right.

Matthew C. Buchanan  
General Counsel

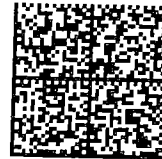
MCB:dn  
Enclosures

cc: Tiffany Butler, Appellate Defender

State of South Carolina

Department of Probation, Parole, and Pardon Services

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