

STATE OF SOUTH CAROLINA  
In the Court Of Appeals

APPEAL FROM GREENVILLE COUNTY  
D. GARRISON HILL, Circuit Court Judge

Trial Court Case No. 1990-GS-23-02177  
Appellate Case No. 2016-002086

**RECEIVED**

OCT 26 2016

SC Court of Appeals

THE STATE,

Respondent,

v.

MARCUS ANTONIO DAWSON,

Appellant.

**RETURN TO DEFENDANT'S MOTION TO FILE APPEAL  
AND ACCEPT SERVICE OUT OF TIME**

Respondent State of South Carolina is in receipt of the Appellant's Motion to File Appeal and Accept Service Out-of-Time dated October 19, 2016. The Appellant's argument is simple. Appellant's counsel, Perry B. DeLoach, Jr., received the written order denying a motion for resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) on September 14, 2016. A notice of Appeal was served upon the Solicitor of Greenville County on October 6, 2016, twenty-one (21) days after receipt of written notice of the order. Appellant's counsel concedes that he was of a mistaken belief that it was a thirty day time standard under SCACR Rule 203(b)(1) (Common Pleas – 30 days) rather than Rule 203 (b)(2) (General Sessions – 10 days).

I.

Respondent State of South Carolina notes that service of the notice of appeal on October 6,

2016 was not timely served. Pursuant to Rule 203(b)(2), SCACR, in a criminal case an appellant must serve a notice of appeal on all respondents within ten days after the sentence is imposed, or within ten days after receipt of written notice of entry of the order or judgment. The time period for serving 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.”); 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.”).

(4)  
§ 2.

Since no proper notice of appeal was served within ten days of Appellant’s receipt of written notice of entry of Judge Hill’s Order of dismissal of his motion before the court of general sessions, this Court has no jurisdiction over Appellant’s case and properly dismissed 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.”).

## II.

Respondent notes that with counsel’s concession that it was his mistaken belief that he had

30 rather than 10 days to file his notice and the implicit desire of Marcus Dawson to appeal the denial of his resentencing motion, it would appear that he would be entitled to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) consideration. Respondent is aware that the Supreme Court in an analogous situation construed the matter as an admittedly untimely served notice to authorize similar consideration. See Riddle v. State, 314 S.C. 1, 4, 443 S.E.2d 557, 559 (1994). Respondent has no objection to the Court treating this as a White v State appeal from the resentencing denial under these discrete circumstances. ***However, Respondent submits that a new post-conviction relief action concerning a White v. State issue would be expedited with summary consideration if brought to below-counsel's attention within a reasonable time.***

WHEREFORE, Respondent makes Return to Appellant's motion.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Senior Assistant Deputy Attorney General

BY: 

Donald J. Zelenka  
S.C. Bar No: 5758

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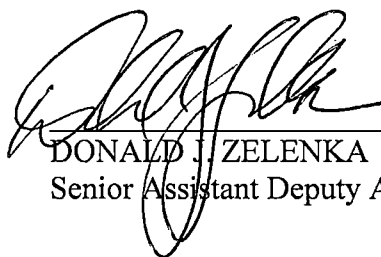
ATTORNEYS FOR RESPONDENT

October 26, 2016

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**CERTIFICATE OF SERVICE**

I, **Donald J. Zelenka**, hereby certify that I have served the Return to Defendant's Motion to File and Accept Service Out of Time in the foregoing action by depositing copy in the United States mail to Perry B. DeLoach, Jr., Esquire, 1225 South Church Street, Greenville, SC 29605 and by InterAgency Mail to Robert M. Dudek, Chief Attorney, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia SC 29201 this 26<sup>th</sup> day of October, 2016.



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DONALD J. ZELENKA  
Senior Assistant Deputy Attorney General

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ALAN WILSON  
ATTORNEY GENERAL

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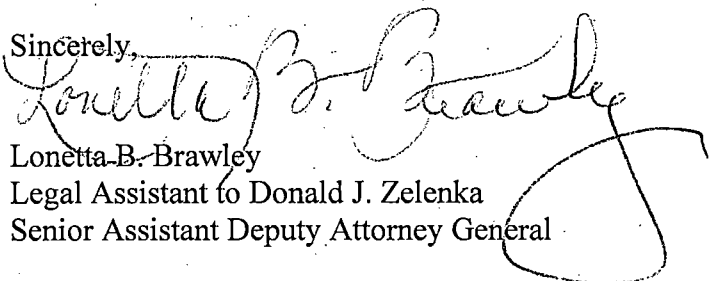
Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Re: State v. Marcus Antonio Dawson  
Appellate Case No. 2016-002086

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Respondent's **Return to Defendant's Motion to File Appeal and Accept Service Out of Time** in the above-captioned matter for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,



Lonetta B. Brawley  
Legal Assistant to Donald J. Zelenka  
Senior Assistant Deputy Attorney General

/lbb  
Enclosure

cc: Perry B. DeLoach, Jr., Esquire  
Robert M. Dudek, Esquire