

The Supreme Court of South Carolina

William Ricky Welch, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-002428

Lower Court Case No. 2013CP4301169

ORDER

Petitioner has filed a motion to allow the late filing of the notice of appeal or, in the alternative, to grant him a reasonable period of time to seek belated appellate review by filing an application for post-conviction relief under *Austin v. State*.¹

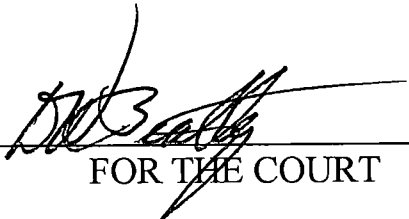
In the motion, petitioner's counsel concedes that the notice of appeal has not been timely served on the State. Therefore, this Court lacks appellate jurisdiction over this case. *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("The requirement of service of the notice 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 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."); *see also* Rule 263(b), SCACR (time to serve the notice of appeal under Rules 203 and 243 cannot be extended).

Accordingly, the motion to allow late filing is denied, and this case is dismissed without prejudice to whatever right petitioner may have to seek relief under *Austin* by filing an application for post-conviction relief in the circuit court. The remittitur will be sent as provided by Rule 221, SCACR.

Finally, a claim under *Austin* is not subject to the statute of limitations but may be subject to the doctrine of laches. *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200

¹ 305 S.C. 453, 409 S.E.2d 395 (1991).

(2002). In light of this, there is simply no reason for this Court to establish a time by which any application seeking relief under *Austin* must be filed with the circuit court.



FOR THE COURT C.J.

Columbia, South Carolina

April 05, 2017

cc: Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire