

The Supreme Court of South Carolina

George Cleveland, III, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001419

Lower Court Case No.

ORDER

By order dated April 5, 2017, the circuit court denied the application for post-conviction relief. Subsequently, by a form order dated April 28, 2017, the circuit court denied a motion filed under Rule 59 of the South Carolina Rules of Civil Procedure (SCRCP). This order did not make any alternation to the order of April 5, 2017.

Petitioner then filed a second motion under Rule 59, SCRCP. By order filed on May 30, 2017, the circuit court denied this motion finding the second motion was an improper successive Rule 59 motion.

Petitioner has now filed notices of appeal from the orders denying the Rule 59 motions. These notices of appeal were served on June 23, 2017.

In *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004), this Court held "[a]n appeal may be barred due to untimely service of the notice of appeal when a party - instead of serving a notice of appeal - files a successive Rule 59(e) motion, where the trial judge's ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment."

In this case, the order denying the first Rule 59 motion did not alter the order of April 5, 2017. Therefore, the second Rule 59 motion did not stay the time to serve the notice of appeal from the order denying the first Rule 59 motion.

Based on the failure of petitioner to timely serve a notice of appeal from the order denying first Rule 59 motion, the notices of appeal filed in this case are dismissed, and the remittitur will be sent as provided by Rule 221, SCACR.



FOR THE COURT C.J.

Columbia, South Carolina
July 28, 2017

cc: Lindsey Ann McCallister, Esquire
Mr. George Cleveland, III