

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

The Honorable John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2017-001659

RECEIVED

AUG 17 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

DEAN ALTON HOLCOMB (2),

APPELLANT.

MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION

The State hereby moves this Court to dismiss Appellant's direct appeal based upon a lack of appellate jurisdiction. The basis for this motion is set forth below.

Background Facts

Appellant was indicted at the September, 2014 term of the Greenville County grand jury for threatening a life of a court official (2014-GS-23-000176A). He was subsequently indicted at the June, 2015 term for intimidation of a court official (Amended Indictment No. 2014-GS-23-8177) and obstruction of justice (Amended Indictment No. 2014-GS-23-8179). He proceeded to trial before the Honorable John C. Hayes, III, and a jury and was convicted of intimidation of a court official and obstruction of justice. Appellant was represented at trial by

Donald L. Smith, Esquire. The State was represented by Seventh Circuit Assistant Solicitor Russell Ghent following recusal of the Thirteenth Circuit Solicitor's Office due to a conflict of interest. Judge Hayes sentenced Appellant to ninety (90) months' imprisonment for obstruction of justice and ninety (90) months consecutive imprisonment for intimidation of a court official, for an aggregate sentence of fifteen (15) years' imprisonment. (Exhibit #1 - Indictments & Sentencing Sheets).

At the close of the trial on June 16, 2017, "Defendant and defense counsel were given ten days within which to file any post-trial motions, that time having expired as of June 27, 2017." (Exhibit #2 – Order dated June 28, 2017). In an Order dated June 28, 2017, and filed with the Greenville County Clerk of Court on July 5, 2017, Judge Hayes noted he had been made aware that the Office of Appellate Defense had made contact with the Greenville County Clerk of Court's office concerning a possible appeal; however, he recognized Appellant had failed to timely file any post-trial motions in the circuit court. Judge Hayes found:

Based on the time for post-trial motions having expired, this court lacks further jurisdiction over this matter. Additionally, assuming it was timely filed, a notice of intent to appeal would, in and of itself, extinguish this court's jurisdiction over the matter.

(Exhibit #2).

In a subsequent Order dated July 19, 2017, and filed with the Greenville County Clerk of Court on July 21, 2017, Judge Hayes noted Appellant had moved the trial court to reconsider its Order of June 28, 2017. Judge Hayes found:

To the extent this Court now has jurisdiction to do so. I hereby vacate said Order. The Court treats the Defendant's "Amended Motion to Reconsider" as the motion currently before the Court, even though it on its face reflects a date of July 3, 2017, a date outside the ten days the Court allotted for post-trial motions.

(Exhibit #3 – Order dated July 19, 2017). The trial court then proceeded to address the issues

raised by Appellant in his untimely post-trial motion, finding none of the three grounds appeared to be proper grounds for post-trial relief in a criminal case. (Exhibit #3).

On July 31, 2017, Appellant served and filed a “Notice of Appeal” which is the basis of the matter now purportedly pending before this Court. In that notice of appeal, Appellant contends he “appeals the Order of Honorable J. John C. Hayes, III, issued on a hearing, dated June 16, 2017, and the Orders, filed July 5, 2017 and July 21, 2017, respectively.” In a letter dated August 8, 2017, this Court advised trial counsel it had received Appellant’s notice of appeal and had assigned it a case number. This motion to dismiss appeal for lack of jurisdiction filed on behalf of the State now follows.

Discussion

The South Carolina Appellate Court Rules state, in pertinent part:

After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents **within ten (10) days after the sentence is imposed**. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a **timely** post-trial motion is made under Rule 29(a), SCRCrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion (emphasis added).

Rule 203, SCACR. The South Carolina Rules of Criminal Procedure provide, in pertinent part, that post-trial motions shall be made **within ten days** after the imposition of the sentence and that the time for appeal shall be stayed by a **timely** post-trial motion and shall run from the receipt of written notice of entry of the order granting or denying such motion. Rule 29, SCRCrimP.

In Appellant’s case, there was no proper, timely motion for reconsideration or notice of appeal served or filed within ten days after the sentence was imposed. This fact was recognized by Judge Hayes in his June 28, 2017, Order. Appellant was admittedly represented by counsel at the

time he was convicted and at the time he ultimately submitted his untimely notice of appeal to this Court; therefore, any attempt to claim that he tried to pursue either a post-trial motion or an appeal *pro se* is of no moment. See State v. Devore, 416 S.C. 115, 123-24, 784 S.E.2d 690, 694-95 (Ct. App. 2016) (“Since Devore was represented by counsel, his *pro se* motion was not proper and could not be accepted. . . . Because Devore’s *pro se* filings were a nullity, there was no proper notice of appeal served or post-trial motion made within ten days of imposition of his sentence, and this court does not have appellate jurisdiction.”).

Since no proper motion for reconsideration or notice of appeal was filed within ten days of Appellant’s conviction, this Court has no jurisdiction over Appellant’s case and must dismiss 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.”). Judge Hayes’ July 19, 2017, Order cannot serve to extend the time frames for service of the notice of appeal, and an untimely post-trial order cannot vest appellate jurisdiction where it did not previously exist.

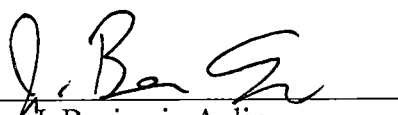
Conclusion

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

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BY: 
J. Benjamin Aplin

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 17, 2017

Exhibit #1

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

Dean Alton Holcomb

INDICTMENT/CASE#: 2014GS2308179

A/W#: 2014A2330207246

Date of Offense: 6/9/2014

S.C. Code § : 16-09-0340

CDR Code #: 2451

AKA:

Race: WHITE Sex: M Age: 47

DOB: 05-03-1970 SS#: 250-53-4144

Address: 229 Young Road

City, State, Zip: Bessimer City, NC 28016

DL#: 008722315 SID#:

SENTENCE SHEET #1

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Courts / Intimidation Of Court Officials Obstruction Of Justice RDB

in violation of § 16-09-0340 (A)(2) RDB of the S.C. Code of Laws, bearing CDR Code # 2451

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Paul C. [Signature] 2439 Defendant PRO SE 9999 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 90 months under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Time served between 8/12/2014 and Sept 11, 2016

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$

Payment Terms: Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly prmts. of \$ beginning \$ paid to Public Defender Fund Other:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100.00, § 14-1-211(A)(2) (DUI Surcharge) \$100.00, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$3.75.

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Paul B. Wicks

Court Reporter: [Signature]

SCCA/217 (07/2016) Presiding Judge Judge Code: Sentence Date: 6/16/17

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT

At a Court of General Sessions, convened on JUN 30 2015 the
Grand Jurors of Greenville County present upon their oath:

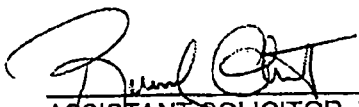
OBSTRUCTION OF JUSTICE

That the Defendant, Dean Alton Holcomb, from approximately May, 2013 through, up until, including and beyond June, 2014, having been arrested by the Greenville County Sheriff's Office and indicted for the commission of a felony, and released on bond, did:

- a. Then impede and obstruct and attempt to impede and obstruct the effective administration of justice in the Court of General Sessions of Greenville County, in the Thirteenth Judicial Circuit of the State of South Carolina by attempting to deter and intimidate Investigator Timothy Martin of the Greenville County Sheriff's Office in the discharge of his duty;
- b. By threats he made against said investigator and others involved in the prosecution of Defendant's criminal case, said threats made and published through a pattern and practice of harassment, directly and indirectly, in a public manner, by means intended to threaten said investigator's life and well-being, and to threaten, intimidate and harass him in his continued work in preparations for prosecution of Defendant's case; and,
- c. The means, manner, nature, pattern and practice of these threats were such as the Defendant intended, knew or should have known that the investigator would understand them, and did understand them, as intended to intimidate or impede him in the discharge of his duties in assistance and preparation for the prosecution of the criminal case against the Defendant..

All in violation of South Carolina Code Ann. §16-9-340(A)(2), (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR, 7th JUDICIAL CIRCUIT
FOR THE 13th JUDICIAL CIRCUIT

JH

8179

DOCKET NO. : 2014-GS-23-00479
AMENDED

WITNESSES

Greenville County Sheriff's Office

The State of South Carolina
County of Greenville
Walt Wilkins, Solicitor

COURT OF GENERAL SESSIONS

June 2015
TERM

ARREST WARRANT NUMBER
2014A2330207246

THE STATE
v.

ACTION OF GRAND JURY

TRUE BILL

Wayne Spurgeon

FOREMAN GRAND JURY

Foreperson of Grand Jury
Date:

DEAN ALTON HOLCOMB

VERDICT

Guilty

Indictment for

OBSTRUCTION OF JUSTICE

SC Code: 16-9-340(A)(2)
CDR Code: 2451
MIS/UNC

Josephine J. Swain
Foreperson of Petit Jury
Date:

ENTERED
ACCT.

008176 A

DOCKET NO. 2014-GS-23-

BCS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2014

THE STATE

vs.

DEAN ALTON HOLCOMB

WITNESSES

~~J. Kindley~~ G. Danhue

SLED

DOA: 8/19/2014 W/M DOB: 5/3/1970

SSN: 250-53-4144

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY
TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0541

THREATENING A LIFE OF A COURT OFFICIAL

VIOLATION § 16-3-1040

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
THREATENING A LIFE OF A COURT OFFICIAL

At a Court of General Sessions, convened on

SEP 16 2014

the Grand Jurors of Greenville

County present upon their oath:

That DEAN ALTON HOLCOMB did in Greenville County, on or between May 28, 2013 and July 28, 2014, knowingly and willfully deliver or convey to INVESTIGATOR TIMOTHY MARTIN with the Greenville County Sheriff's Office, computer email messages a threat to inflict bodily harm upon or take the life of INVESTIGATOR TIMOTHY MARTIN with the Greenville County Sheriff's Office or members of his immediate family and the threat was directly related to INVESTIGATOR TIMOTHY MARTIN'S professional responsibilities. This is in violation of §16-03-1040 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR BAR # 015305

Exhibit #2

5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 State of South Carolina,)
)
 Plaintiff,)
)
 v.)
)
 Dean Alton Holcomb,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FOR THE 13TH JUDICIAL CIRCUIT

RECEIVED
 Indictment No.: 2014-GS-23-08177-817

AUG 04 2017

SC Court of Appeals

ORDER

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2017 JUL 5 AM 9 16

The above-captioned case was tried to a verdict on June 16, 2017 in Greenville County, South Carolina. Defendant and defense counsel were given ten (10) days within which to file any post-trial motions in this matter, that time having expired as of June 27, 2017.

The undersigned has been made aware that Appellate Defense has made contact with the Greenville County Clerk of Court's Office concerning an appeal of this matter. However, the undersigned has also been made aware that no notice of intent to appeal has been filed with the Greenville County Clerk of Court's Office.

Based on the time for post-trial motions having expired, this court lacks further jurisdiction over this matter. Additionally, assuming it was timely filed, a notice of intent to appeal would, in and of itself, extinguish this court's jurisdiction over the matter.

IT IS SO ORDERED.

John C. Hayes, III
 The Honorable John C. Hayes, III
 Presiding Judge

June 16th, 2017
 York, SC

Exhibit #3

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
)
State of South Carolina,)
)
vs,)
)
Dean Alton Holcomb,)
)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

2014-GS-23-08176, 8177, 8178 and 8179

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2017 JUL 21 AM 9 02

Defendant, Dean A. Holcomb, has moved the Court, to reconsider its Order of June 28, 2017 in this matter. To the extent, the Court now has jurisdiction to do so. I hereby vacate said Order. The Court treats the Defendant's "Amended Motion to Reconsider" as the motion currently before the Court, even though it on its face reflects a date of July 3, 2017, a date outside the ten days the Court allotted for post-trial motions.

The Court below addresses the Issues framed by Defendant. However, none of the three grounds appear to be proper grounds for post-trial relief in a criminal case. *See State v. Taylor*, 348 S.C. 152, 558 S.E.2d 917 (Ct. App. 2001).

Due to the limited time a defendant may appeal from an adverse General Sessions verdict, the Court must state that the undersigned was on vacation the weeks of July 3rd and 10th, 2017, and has only seen the Motion to Reconsider the June 28, 2017 Order and the July 3, 2017 Amended Motion, on the 17th day of July 2017.

Taking in order the issues Defendant raised in his July 3, 2017 amended motion.

Issue I) I find the record does not support the assertion that the jury was compromised by two of their brethren.


Issue II) I find that no evidence ruled out of Defendant's trial of September 2016, was admitted and published save evidence from said trial offered and published by Defendant, or as necessitated by

evidence offered or published by Defendant.

Issue III) I find no grounds for granting a new trial based on any mental issues asserted by Defendant.

Defendant's Motion for a New Trial is Denied.

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge #2

July 19th, 2017
York, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Indictment Nos. 2014-GS-23-8177; 8178; 8179
Appellate Case No. 2017-001659

RECEIVED
AUG 17 2017
SC Court of Appeals

The StateRespondent,

v.


Dean Alton Holcomb #2,Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Motion to Dismiss Appeal for Lack of Jurisdiction on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Donald L. Smith, Esquire, 122 N. Main Street, Anderson, South Carolina 29621.

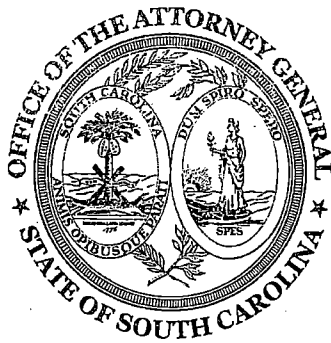
I further certify that all parties required by Rule to be served have been served.

This 17th day of August, 2017.



ANGEZA BENNETT
Administrative Coordinator

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

August 17, 2017

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

Re: The State v. Dean Alton Holcomb #2
Appellate Case No: 2017-001659

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the State's Motion to Dismiss for Lack of Jurisdiction along with proof of service in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No: 8729

JBA/ab
Enclosures

cc: Donald L. Smith, Esquire
Assistant Solicitor Russell Ghent
Robert M. Dudek
Victim Advocacy Division

RECEIVED

AUG 17 2017

SC Court of Appeals