

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County
Honorable Perry M. Bucker, III, Circuit Court Judge
Appellate Case No. 2016-001624

The State,

Respondent,

vs.

Daniel Glen Hieronymus,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

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

ATTORNEYS FOR RESPONDENT

RECEIVED

MAR 03 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
Honorable Perry M. Bucker, III, Circuit Court Judge
Appellate Case No. 2016-001624

The State,

Respondent,

vs.

Daniel Glen Hieronymus,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

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

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES2

STATEMENT OF ISSUES ON APPEAL3

STATEMENT OF THE CASE.....4

ARGUMENT.....5

 I. Appellant’s case should be dismissed because Appellant failed to file a
 timely Notice of Appeal within ten (10) days for a criminal conviction
 from Magistrate’s Court to the Court of Common Pleas.....5

CONCLUSION.....9

TABLE OF AUTHORITIES

Cases

Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5 (Ct. App. 1999)..... 9

Henning v. Kaye, 307 S.C. 436, 437 (1992)..... 10

See Hill v. South Carolina Dept. of Health and Environmental Control, 389 S.C. 2, 21 (2010) ... 9

State v. Brown, 344 S.C. 302 (2001)..... 8

State v. Oxner, 391 S.C. 132 (2011)..... 8

State v. Porch, 417 S.C. 619 (Ct. App. 2016)..... 8

State v. Santiago, 370 S.C. 153, 163 (Ct. App. 2006). 8

USAA Prop. & Cas. Ins. Co. v. Clegg, 377S.C. 643, 651 (2008) 8

Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC, 413 S.C. 642 (2015)..... 8

Statutes

Rule 203(b), SCACR 9

SC Code 18-3-30..... 6,8

SC Code 44-1-140..... 6

SC Code 44-1-150..... 6

SC Code 18-3-10..... 8

Regulations

SC Code of Regulations 61-47 6

STATEMENT OF ISSUES ON APPEAL

- I. Appellant's case should be dismissed because Appellant failed to file a timely Notice of Appeal within ten (10) days for a criminal conviction from Magistrate's Court to the Court of Common Pleas.

STATEMENT OF THE CASE

On December 18, 2015, Officer Tara M. Donahue with the Department of Health and Environmental Control (hereinafter "DHEC") served Daniel Glen Hieronymus (hereinafter "Appellant") with Shellfish Ticket 22603. On March 15, 2016, Appellant exercised his right to a bench trial before the Honorable J. Reaves McLeod at the Colleton County Magistrate. Officer Donahue represented the State and Nancy Bloodgood, Esquire, represented Appellant. On April 12, 2016, the court issued an order with an opinion of Appellant's guilt and served the order on the parties that day.

On May 20, 2016, Appellant filed an untimely Notice of Appeal with the Colleton County Clerk of Court.¹ On June 30, 2016, the Honorable Perry M. Buckner, III, held a motion hearing in the Colleton County Court of Common Pleas. On July 7, 2016, Judge Bucker issued an order dismissing Appellant's appeal for being untimely filed. The Colleton County Clerk of Court filed the order on July 13, 2016.

On August 4, 2016, Appellant filed a Notice of Appeal in this Honorable Court. On August 17, 2016, the State, through undersigned counsel, filed a Motion to Dismiss for Lack of Jurisdiction. After one extension request, Appellant filed his Response on September 8, 2016. On November 4, 2016, this Honorable Court denied the Motion to Dismiss since Appellant's Notice of Appeal had been timely filed in this Court. On December 9, 2016, Appellant filed his Initial Brief and Designation to be Included in the Record on Appeal.

This timely Brief for Respondent now follows.

¹ Although Appellant made two prior attempts to file his Notice of Appeal, such attempts were unsuccessful. Appellant's Notice of Appeal was not officially clocked in by the Colleton County Clerk of Court until May 20, 2016. It is the State's position that Appellant's Notice of Appeal was not properly filed until that day.

ARGUMENT

I. Appellant's case should be dismissed because Appellant failed to file a timely Notice of Appeal within ten (10) days for a criminal conviction from Magistrate's Court to the Court of Common Pleas.

Appellant contends the lower court erred in dismissing Appellant's case for lack of jurisdiction because the offense committed and the penalty was civil in nature and not criminal. Therefore, it is Appellant's assertion that he had thirty (30) days, not ten (10), to file his Notice of Appeal to the Court of Common Pleas. It is Respondent's position the conviction entered against Appellant is criminal and Appellant missed the ten (10) day jurisdictional deadline for filing as mandated by South Carolina Code Section 18-3-30(A).

Appellant's Criminal Conviction

The applicable law in this case is SC Code §§ 44-1-140 and 44-1-150 as well as SC Code of Regulations 61-47. SC Code 44-1-140 gives DHEC the authority to "make, adopt, promulgate and enforce reasonable rules and regulations" pertaining to the "safety and sanitation in the harvesting, storing, processing, handling, and transportation" of shellfish. See SC Code 44-1-140(5). As a result, DHEC promulgated R.61-47.² The current version of these regulations became effective on June 26, 2015.

Furthermore, a person who "after notice violates, disobeys, omits, or neglects to comply with a regulation of [DHEC] made pursuant to Section 44-1-140, is guilty of a misdemeanor." See SC Code 44-1-150(A).

In this case, Officer Donahue served Appellant with Shellfish Ticket No. 22603 which states it is an "Official Summons and Arrest Report" (R.p. 119). The caption on the ticket is the

² Subsection "C" deals with the "Harvesting, Handling, and Transportation of Shellfish" which served as the underlying basis for Appellant's conviction.

“State of South Carolina vs. Daniel Glen Hieronymus” (Shellfish Ticket). The ticket was issued and served upon Appellant by a law enforcement officer. This is further evidenced on the Shellfish Ticket where it is signed by the officer and above her signature it clearly states “[b]y Env. Control Officer” (R.p.119).

At trial, the court identified “Officer” Donahue as a law enforcement officer during the Magistrate Trial (R.p.51-61; p.66). In addition, Judge McLeod specifically stated in his order and opinion that he found Appellant guilty of a misdemeanor (R.p.126). This matter is classified as “criminal” under the public index (R.p.121-122).

Appellant testified on his own behalf during the trial before the Magistrate. Appellant stated he grew up in a “commercial fishing family,” had been conducting his business for four (4) years, and was aware of “fishing tickets” (R.p.72-77). He further testified that he always “tried to be in good standing with DHEC law enforcement” (R.p.72). Therefore, based on Appellant’s knowledge and experience, he was aware that the violation was criminal in nature.

Additionally, as to Appellant’s argument asserting DHEC charged the wrong individual with the offense, this argument was never raised before the magistrate during trial. In fact, the magistrate at the conclusion of the hearing further questioned Appellant’s counsel for clarification as to the issues he raised, and Appellant never argued the other person who wrote the tags for the shellfish should have been charged. (R.p.88-95). It is well-settled law that arguments not properly raised in the lower courts are deemed waived. See State v. Porch, 417 S.C. 619 (Ct. App. 2016) “[i]f an issue was not raised and ruled upon below, it will not be considered for the first time on appeal” citing State v. Santiago, 370 S.C. 153, 163 (Ct. App. 2006). Therefore, Appellant’s underlying argument as to being wrongfully charged cannot be addressed at this time, and the judgment against Appellant is a criminal conviction.

Appellant's Untimely Appeal to the Court of Common Pleas

South Carolina Code 18-3-10 et.seq. sets forth the manner for appealing a criminal conviction from Magistrate's Court. SC Code 18-3-30 specifically states "the Appellant, **within ten days after sentence, shall file a Notice of Appeal with the Clerk of Court...**" (emphasis added). Furthermore, it is well-settled that the Rules of Civil Procedure that allows service of a Notice of Appeal within 30 days of judgment does not apply to an appeal from a criminal conviction in Magistrate's Court. See State v. Brown, 344 S.C. 302 (2001), overruled on other grounds by State v. Oxner, 391 S.C. 132 (2011). See also Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC, 413 S.C. 642 (2015) (holding than an e-mail from the Court with an attachment containing an order constitutes written entry and receipt of the decision for purposes of appeal); USAA Prop. & Cas. Ins. Co. v. Clegg, 377S.C. 643, 651 (2008), ("[t]he requirement of service of the Notice of Appeal is jurisdictional, i.e. if a party misses the deadline, the appellate courts lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by pretending or ignoring the deadline for service of the notice.")

In Appellant's case, a Notice of Appeal was not filed within ten (10) days after the conviction to the Court of Common Pleas. As stated previously, the conviction was entered on April 12, 2016. On May 20, 2016, Appellant officially filed the Notice of Appeal with the Colleton County Clerk of Court. The Notice of Appeal in this case was filed in the Clerk of Court 28 days beyond the deadline.

At best, Appellant states in his Notice of Appeal dated May 11, 2016 he received the Order from the Magistrate Court on April 16, 2016. (R.p.8-11). Appellant first attempted to file of a Notice of Appeal in the Colleton County Clerk on May 11, 2016 and then again on May 17, 2016. However, the Notice of Appeal was not clocked in until May 20, 2016. Pursuant to SC

Code 18-3-30, in order to perfect the Notice of Appeal, it has to be filed within ten (10) days after sentence with the Clerk of Court. The Notice of Appeal was not properly filed until May 20, 2016. Nonetheless, giving Appellant every benefit, Appellant first brought the Notice of Appeal to the Clerk of Court on May 11, 2016, which still makes the filing outside of the ten (10) day requirement and the Notice of Appeal untimely.³

Since no proper Notice of Appeal was filed with the Clerk of Court within the ten (10) days of order from Magistrate's Court, the Court of Common Pleas had no jurisdiction over Appellant's case and had to dismiss his appeal for lack of jurisdiction. See Hill v. South Carolina Dept. of Health and Environmental Control, 389 S.C. 2, 21 (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 (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 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 (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.").

Therefore, the Court of Common Pleas properly dismissed Appellant's appeal for being untimely. Respondent respectfully requests the decision of the lower court be affirmed.

³ This argument provides Appellant every possible allowance based on the dates they provided in previous pleadings. Respondent maintains the position that the Notice of Appeal was actually filed 28 days late, as argued above.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
S:C. Bar No. 8729

BY:



J. Benjamin Aplin

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 898-1251

ATTORNEYS FOR RESPONDENT

March 3, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAR 03 2017
SC Court of Appeals

Appeal from Colleton County
Honorable Perry M. Bucker, III, Circuit Court Judge
Appellate Case No. 2016-001624

The State,

Respondent,

vs.

Daniel Glen Hieronymus,

Appellant.

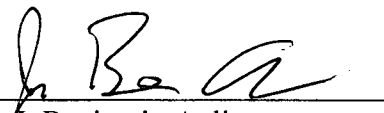
CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR.

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BY:



J. Benjamin Aplin
S.C. Bar No: 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 898-1251

ATTORNEYS FOR RESPONDENT

March 3, 2017