

The Supreme Court of South Carolina

The State, Respondent,

v.

Tabitha Roberts, Appellant.

Appellate Case No. 2017-001952
Lower Court Case Nos. 2017GS0400449,
2017GS0400451, and 2017GS0400450

ORDER

After being sentenced in these criminal cases, appellant filed a motion to reconsider the sentences. This motion was denied by order dated June 5, 2017.

Petitioner has now filed a *pro se* notice of appeal and a *pro se* motion for a belated appeal. These documents are dated September 19, 2017, and the proof of service indicates that these documents were served on the State that same day.

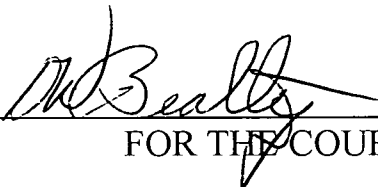
With the notice of appeal and motion, appellant has provided a copy of a letter from her counsel dated June 9, 2017. This letter advised appellant that the motion to reconsider the sentences had been denied and indicated that a copy of the June 5, 2017, order was enclosed. Therefore, appellant's counsel had written notice of entry of the order denying the motion by at least June 9, 2017.

Under Rule 203(b)(2) of the South Carolina Appellate Court Rules (SCACR), the notice of appeal had to be served within ten (10) days of receipt of written notice of the entry of the order denying the motion to reconsider the sentences.

Accordingly, the notice of appeal has not been timely served in this case, and the notice of appeal is dismissed. Further, the motion asking this Court to grant a belated appeal is denied. Rule 263(b), SCACR (time to serve the notice of appeal may not be extended); *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.”). The remittitur will be sent as provided by Rule 221, SCACR.

This dismissal and denial are without prejudice to whatever right appellant may have to seek relief under *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), by filing a timely application for post-conviction relief in the circuit court. See *Wicker v. State*, 310 S.C. 8, 425 S.E.2d 25 (1992) (“Under an exception to the prohibition against appellate courts considering appeals in the absence of notice of intent to appeal given and timely served, *White v. State*, *supra*, permits consideration of the full trial record on this issue in conjunction with appellate review of the PCR proceeding.”).



FOR THE COURT C.J.

Columbia, South Carolina
September 26, 2017

cc: Ms. Tabitha Roberts
Sarah Ganass Drawdy, Esquire
Office of the Attorney General