

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

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CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Diane S. Goodstein., Circuit Court Judge

Appellate Case No. 2017-001978

JEFFREY WALKER-WILSON,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION

The State hereby moves this Court to dismiss Petitioner's post-conviction relief appeal based upon a lack of appellate jurisdiction. The basis for this motion is set forth below.

I. Procedural History

Petitioner was indicted during the January, March, and July 2007 terms of the Richland County Grand Jury for two counts of armed robbery, two counts of possession of a pistol by a person under the age of twenty one, one count of use of a firearm during the commission of a violent crime and one count of unlawful carrying of a pistol. Tivis C. Sutherland, IV, Esquire, represented Petitioner on all charges. Petitioner proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr., where he was found guilty as indicted of all charges. On July 25, 2007, Judge Cooper sentenced Petitioner to an aggregate seventeen year sentence.

Counsel filed a notice of appeal on Petitioner's behalf and his representation was transferred to Deputy Chief Appellate Defender Wanda H. Carter of the South Carolina Commission on Indigent Defense-Division of Appellate Defense. Carter submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Following a review of the brief and record below in its entirety, the South Carolina Court of Appeals dismissed Petitioner's appeal by unpublished opinion filed November 20, 2009. The Remittitur was sent on December 9, 2009.

Petitioner filed an application for post-conviction relief on August 13, 2012. Respondent filed a Return and Motion to Dismiss the application on August 15, 2012, asserting the application was barred by the one year statute of limitations pursuant to S.C. Code Ann. § 17-27-45. Petitioner responded to Motion to Dismiss, arguing he was not timely informed of the conclusion of his appeal or afforded an opportunity to submit his own *pro se* brief. The matter was set for a hearing on Respondent's Motion to Dismiss.

On July 22, 2013 and July 29, 2013, Petitioner, through counsel Louis H. Lang, Esquire, amended Petitioner's application to include additional grounds for relief. A hearing was convened August 5, 2013, at the Richland County Courthouse before the Honorable Diane S. Goodstein. Petitioner was present alongside counsel Lang. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. At the start of the hearing, Respondent renewed its motion to dismiss. The court took the motion under advisement and allowed Petitioner to proceed forward with an evidentiary hearing. Petitioner testified on his own behalf and presented testimony from Appellate Defender Carter and trial counsel Sutherland.

On September 22, 2014, the court signed an "Order Granting Post-Conviction Relief," granting Petitioner "an appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991)¹."

¹ In Austin, the South Carolina Supreme Court held that "where convict alleged in his second post-conviction relief

The court denied relief as to all of Petitioner's remaining allegations, finding them to be without merit. This Order was filed on January 28, 2015.

On February 3, 2015, Respondent filed and served a notice of appeal challenging the lower court's grant of a belated review of direct appeal issues. Three days later, on February 6, 2015, Petitioner filed a "Motion to Alter or Amend Judgement." After receiving the motion, on February 11, 2015, Respondent moved to dismiss its appeal without prejudice pursuant to Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986). By written order dated February 26, 2015, this Court dismissed the appeal without prejudice. The Remittitur was sent on March 16, 2015.

Thereafter, Respondent made its return to Petitioner's motion to alter or amend on June 4, 2015. By written order dated July 15, 2016, and filed on July 20, 2016, the court denied Petitioner's motion to alter or amend. The accompanying Form 4 shows this motion was served on Petitioner's counsel, Louis H Lang, and Petitioner personally, on July 21, 2016. (See Exhibit A, Form 4 and Order).

More than a year later, on September 25, 2017, Petitioner submitted a *pro se* Notice of Appeal with this Court without a Certificate of Service. In this Notice of Appeal, Petitioner states he received written notice of the order denying his motion to alter or amend on "August 2016." Attached to Petitioner's Notice of Appeal was a "Petition for a Belated Appeal and/or Alternative Reinstatement of State Appeal of 2-3-15." (See Exhibit B, Notice of Appeal and Attached Petition).

(PCR) application that he expressed desire to seek review of denial of his first PCR application but that his counsel failed to timely seek review, convict stated claim of ineffective assistance, thus requiring remand for evidentiary hearing on issue of whether in fact convict requested and was denied opportunity to seek appellate review." Austin, 305 S.C. 453, 409 S.E.2d 395 (1991). As this is Petitioner's first post-conviction relief action, the State interprets the court's grant of an appeal pursuant to Austin to be a scrivener's error. Respondent interprets the court's ruling to be the grant of an appeal to Petitioner pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), the South Carolina Supreme Court case that afford a post-conviction relief petitioner an opportunity for direct appellate review of his case when he establishes that he did not knowingly and voluntarily waive his right to appeal.

On October 4, 2017, this Court wrote to counsel of record, Louis H. Lang, with a copy to Petitioner and Respondent, noting he was still counsel of record, enclosing Petitioner's *pro se* notice of appeal from an order filed on July 20, 2016, and asking Lang to advise the Court of the date on which he received written notice of entry of the order within ten days of the date of the letter. As of today, Respondent is not aware of any response to this Court's letter.

II. Discussion

The South Carolina Appellate Court Rules provide the notice of appeal from a post-conviction relief action must be filed and served within thirty days after receipt of written notice of entry of the order or judgment. Rules 203, 243, SCACR.

In Miller v. State, the South Carolina Supreme Court stated as follows:

Since there is no right to “hybrid representation” that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel. State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). Because petitioner was represented by counsel, the *pro se* motion was not proper, should not have been accepted, and should not have been ruled upon. **The motion was essentially a nullity.** We therefore vacate the order ruling on the motion and dismiss petitioner's notice of appeal as moot. We also take this opportunity to remind judges and clerks of court of our directive in Foster not to accept substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a party who is represented by counsel (emphasis added).

388 S.C. 347, 697 S.E.2d 527 (2010). The Court of Appeals recently reached a similar conclusion in dismissing a criminal appeal for a lack of appellate jurisdiction. 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.”).

In Petitioner’s case, there was no proper, timely notice of appeal served or filed within thirty days after the clerk’s office served the order denying Petitioner’s motion to alter or amend. I Petitioner’s improper *pro se* notice of appeal, he acknowledges he received written notice of the order in “August 2016.”

Moreover, Petitioner was admittedly represented by counsel at the time at the time he submitted the *pro se* notice of appeal to this Court. Under Miller and Devore, this document was an improper *pro se* filing that should not have been—and could not properly have been—accepted by this Court; it was a nullity. Devore, 416 S.C. at 123-24, 784 S.E.2d at 694-95; Miller at 347, 697 S.E.2d at 527; see also Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (“There is no constitutional right to hybrid representation either at trial or on appeal.”); Foster v. State, 298 S.C. 306, 307, 379 S.E.2d 907, 907 (1989) (ordering the Clerk of Court to return a substantive *pro se* document filed while the petitioner was represented by counsel). Therefore, the *pro se* filing could not operate as a notice of appeal.

Since no proper motion for reconsideration or notice of appeal was filed within thirty days of the denial of Petitioner’s motion, this Court has no jurisdiction over Petitioner’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.”). Although this required dismissal will prevent Petitioner from challenging the denial of his post-conviction relief claims through this current appeal, Petitioner’s issues can be raised in a subsequent post-conviction relief application pursuant to Austin, 305 S.C. 453, 409 S.E.2d 395 (1991).

III. 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

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
S.C. Bar No. 100108

BY: 
Megan Harrigan Jameson

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

October 13, 2017

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4005497

Jeffrey Douglas #314361 Walker Wilson

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of July, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Jeffrey Douglas #314361 Walker
Wilson

Louis H. Lang

Megan Harrigan Jameson

Jeffrey Douglas #314361 Walker
Wilson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Janette W. McBride

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A NO. 2012-CP-40-05497

Jeffrey Walker-Wilson, #314361,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

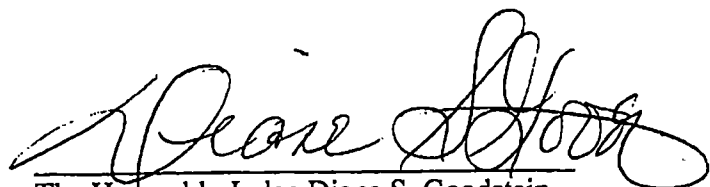
ORDER

RICHLAND COUNTY
FILED
2016 JUL 20 PM 12:33
JEANETTE W. REYNOLDS
C.C.P. & G.S.

The Court was mailed a courtesy copy of Defendant's Motion to Alter or Amend Judgment. It does not appear that the motion was served on the Court but the Certificate of Service by mail indicates it was mailed to an address not applicable to the Dorchester County Courthouse in excess of four years prior to mailing. The service was not made to the Court's published address.

If however notice to the court is not required to be more precise the Court has reviewed Applicant's Motion to Alter or Amend and the State's return and it's Order and after consideration finds no new persuasive argument or evidence. Therefore Applicant's Motion to Alter or Amend is DENIED.

AND IT IS SO ORDERED.


The Honorable Judge Diane S. Goodstein
First Judicial Circuit, Court of Common Pleas

July 15, 2016

St. George, South Carolina

Exhibit B

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No.: 2012-CP-40-05497

JEFFREY DOUGLAS WALKER-WILSON, Appellant,

vs.

STATE OF SOUTH CAROLINA, Respondent

NOTICE OF APPEAL

Jeffrey Douglas Walker-Wilson appeals the 'Order Granting Post-Conviction Relief' of 9-22-14 and order of 7.15.16 of the Honorable Diane S. Goodstein; he received written notice of the 7-20-16 filed order on August 2016.

This 25 day of September 2017.

Jeffrey Douglas Walker-Wilson
314361, GC1, B4 20B
4550 Broad River Road
Columbia, SC 29210

Other Counsel of Record:

Megan H. Jameson
POB 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DIANE S. GOODTEIN, CIRCUIT COURT JUDGE
Case No.: 2012-CP-40-05497

Jeffrey Douglas Walker-Wilson, Appellant,

vs.

State of South Carolina, Respondent.

To: Megan H. Janeson
POB 11549
Columbia, SC 29211

PETITION FOR BELATED APPEAL AND/OR
ALTERNATIVE REINSTATEMENT OF
STATE APPEAL OF 2-3-15

Appellant Walker-Wilson asks the Court to grant the belated appeal herein and/or alternative reinstatement of the State 2.3.15 appeal from the 9-22-16 Order Granting Post-Conviction Relief (GPCR).

Appellant points:

1. GPCR granted "equitable tolling" (p. 4 of 5) and the government filed a timely appeal which was "dismissed pursuant to Hudson v. Hudson, 290 S.C. 315" "without prejudice" (see attachment);
2. When the Court ruled on appellant's 59(e) motion; PCR counsel did not file a notice of appeal but gave SC Office of Appellate Defense notice of Walker-Wilson's desire to appeal and appellate counsel(s) were found at fault concerning direct appeal proceeding(s) that resulted in equitable tolling ruling;

3. Appellate Defender's Office failed to timely file the appeal of the 59(e) motion decision and/or failed to advise anyone of in action;

Wherefore, the petition and etc. should be granted. This 25 day of September 2017.

1/s/ Jeffrey Douglas Walker-Wilson

Jeffrey Douglas Walker-Wilson
314361, G61, B4 20B
4556 Broad River Road
Columbia, SC 29210

CERTIFICATE OF SERVICE

DATED, SIGNED and MAILED to government's attorney set forth above the 26 day of September 2017.

1/s/ Jeffrey Douglas Walker-Wilson

The Supreme Court of South Carolina

Jeffrey Douglas Walker-Wilson, Respondent,

v.

State of South Carolina, Petitioner.

Appellate Case No. 2015-000261

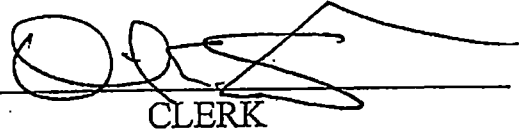
Lower Court Case No. 2012-CP-40-05497

ORDER

Petitioner requests that this appeal be dismissed pursuant to *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986). Accordingly, this matter is dismissed without prejudice. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

February 26, 2015

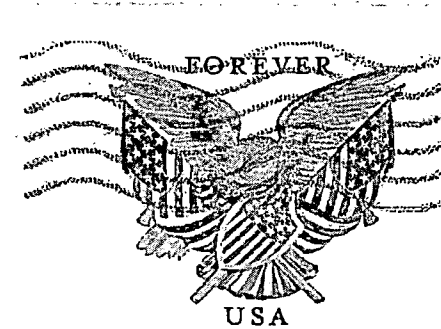
cc: Megan Harrigan Jameson, Esquire
Louis H. Lang, Esquire

MAR 18 2015

Jeff Walker #314361
Goodman CE/B4-25B
4556 Broad River Rd.
Columbia, SC 29210

COLUMBIA SC 29210

26 SEP 2017 PM 3:1



SCDC

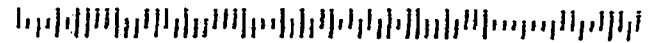
SEP 26 2017

MAIL ROOM

MEGAN HARRIGAN JAMESON
ASS. ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211

LEGAL MAIL

29211-154949



STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County
Court of Common Pleas
Honorable Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2017-001978

JEFFREY WALKER-WILSON,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Motion to Dismiss Appeal for Lack of Jurisdiction**, has been served upon opposing counsel by mailing two (1) copies in the United States mail, postage prepaid:

Louis H. Lang, Esquire
Callison Tighe & Robinson, LLC
PO Box 1390
Columbia, SC 29202-1390

This 13th day of October, 2017


JENNIFER JENNISON
LEGAL ASSISTANT



RECEIVED

OCT 13 2017

S.C. SUPREME COURT

ALAN WILSON
ATTORNEY GENERAL

October 13, 2017

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: Jeffrey Walker-Wilson v. State of South Carolina
Appellate Case No. 2017-001978

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the **Motion to Dismiss Appeal for Lack of Jurisdiction**. By copy of this letter we are serving opposing counsel today.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General
SC Bar No. 100108

MHJ/jaj
Enclosures

cc: Louis H. Lang, Esquire
Victim Advocacy Division