

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2017-000557

**RECEIVED**  
FEB 08 2018  
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

WILLIE YOUNG,

APPELLANT.

**MOTION TO DISMISS APPEAL**

Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

Appellant was indicted on January 28, 2002, by the grand jury of Orangeburg County for armed robbery (Indictment No. 2001-GS-38-2492). He proceeded to trial by jury and was convicted as charged. He was sentenced by the Honorable James C. Williams, Jr., to thirty (30) years’ imprisonment and is currently incarcerated in the South Carolina Department of Corrections.

**II.**

On or about July 26, 2016, Appellant, acting pro se, submitted a Rule 29(b), SCRCrimP,

motion for a new trial based on after-newly discovered evidence in the Orangeburg County Court of General Sessions arguing the Orangeburg County Solicitor's Office unlawfully impaneled its grand jury out of term and returned a fraudulent indictment. A hearing on Appellant's motion was apparently convened on October 26, 2016, at the Orangeburg County Courthouse before the Honorable Edgar W. Dickson.<sup>1</sup> Appellant appeared pro se. At the conclusion of the hearing, Judge Dickson denied Appellant's motion and on December 21, 2016, the lower court apparently issued an order to this effect.<sup>2</sup> Appellant subsequently served and filed a Notice of Appeal with this Court. His original notice of appeal was received by this Court on February 23, 2017, and indicated Appellant received written notice of Judge Dickson's Order on February 11, 2017.

On March 7, 2017, this Court wrote to Appellant notifying him of certain deficiencies under the South Carolina Appellate Court Rules and asking him to correct those deficiencies within ten (10) days of the date of the letter. Those deficiencies included: (1) that his purported proof of service was not in compliance with the SCACR and (2) that the notice of appeal was not accompanied by the order challenged on appeal. On May 16, 2017, this Court received a new "Notice of Appeal" dated May 11, 2017, and a "Proof of Service" showing this notice of appeal was served on the State in May of 2017, approximately three months after Appellant admittedly received written notice of entry of the order.

Appellant subsequently filed a "Brief of Appellant" dated October 30, 2017, and received by the State on November 17, 2017, in which he argues Judge Dickson erred in denying his motion for a new trial. In that brief, Appellant seeks to proceed with this appeal without a transcript of the lower court proceedings. On January 10, 2018, this Court wrote to Appellant notifying him the

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<sup>1</sup> As explained below, Appellant has not yet obtained a transcript of the proceeding or otherwise provided documentation verifying the date of the proceeding before Judge Dickson.

<sup>2</sup> As noted in this Court's March 7, 2017, deficiency letter, which is described below, Appellant's notice of appeal was not accompanied by the order challenged on appeal.

time for ordering the transcript has expired and giving him ten (10) days from the date the letter to: “file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules” or the appeal would be dismissed.

### III.

As of today’s date, approximately one month after the date of the Court’s January 10, 2018, letter, Appellant has not provided a letter ordering the transcript from the court reporter. The Rules provide: “Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below.” Rule 207(a)(1), SCACR. The State has not agreed to proceeding with this appeal without a transcript and submits a record of the proceeding before Judge Dickson will be needed if this appeal is allowed to go forward. In light of this continued deficiency, the State hereby moves this Court to dismiss this appeal per the Court’s January 10, 2018, letter.

### IV.

The State further submits this appeal should be dismissed for Appellant’s continued failure to provide a copy of the order challenged on appeal, a deficiency that has continued to exist despite this Court’s April 28, 2017, letter.

### V.

Finally, and most importantly, Appellant’s proof of service indicates his notice of appeal was not served “within ten (10) days after receipt of written notice of entry of the order or judgment” as required by Rule 203(b)(2), SCACR. As a result, 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.”).

**WHEREFORE**, the State respectfully requests that this Court dismiss Appellant’s appeal for lack of jurisdiction and due to his continued failure to correct deficiencies in his appeal.

Respectfully submitted,

ALAN WILSON  
Attorney General

J. BENJAMIN APLIN  
Senior Assistant Deputy Attorney General

BY:   
J. Benjamin Aplin  
S.C. Bar #8729

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

**ATTORNEYS FOR RESPONDENT**

February 8, 2018

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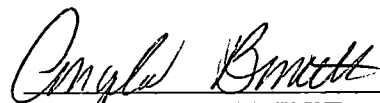
APPELLANT.

**PROOF OF SERVICE**

I, Angela S. Bennett, Administrative Coordinator, certify that I have served the within Motion to Dismiss on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Willie Young, III, 285487  
Allendale Correctional Institution  
P.O. Box 1151, Hwy 47  
Fairfax, SC 29827

I further certify that all parties required by Rule to be served have been served. This 8<sup>th</sup> day of February, 2018.



ANGELA S. BENNETT  
Administrative Coordinator

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



ALAN WILSON  
ATTORNEY GENERAL

February 8, 2018

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SC Court of Appeals

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

RE: The State v. Willie Young:  
Appellate Case No. 2017-000557

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Motion to Dismiss, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

J. Benjamin Aplin  
Senior Assistant Deputy Attorney General  
S.C. Bar Number 8729

JBA  
Enclosures

cc: Willie Young, III, #285487  
Victim Advocacy Division