

The South Carolina Court of Appeals

The State, Respondent,

v.

Genuine Truth Banner, Appellant.

Appellate Case No. 2018-000536

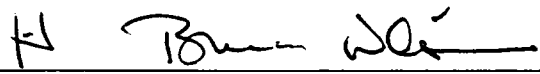
ORDER

The appellant filed a pro se notice of appeal from his conviction and sentence following a guilty plea¹ on January 23, 2018. The notice of appeal was received by the Court on March 27, 2018. Our review of the public index revealed the appellant was represented by counsel, so we directed our correspondence to the appellant's attorney pursuant to Rule 264 of the South Carolina Appellate Court Rules (SCACR). Rule 264(a), SCACR (setting forth the rule of continued representation from the circuit court to the appellate court until withdrawal is approved and notice is given). Counsel notified the Court that a timely motion to reconsider sentence was filed with the plea court. Prior to the February 9, 2018 hearing on the motion to reconsider sentence, the appellant asked his attorney to withdraw the motion.

"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." *State v. Devore*, 416 S.C. 115, 784 S.E.2d 690 (Ct. App. 2016) (quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-

¹ In his pro se filing, the appellant asserts his plea was made pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160 (1970). Whether this appeal arises out of a guilty plea or an *Alford* plea does not change the application of the law herein. See *State v. Herndon*, 403 S.C. 84, 91, 742 S.E.2d 375, 379 (2013) ("The *Alford* plea is, in essence, a guilty plea and carries with it the same penalties and punishments.").

15, 602 S.E.2d 772, 775 (2004)). "After a plea or trial resulting in a conviction . . . a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed." Rule 203(b)(2), SCACR. "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." Rule 203(b)(2), SCACR. Because the appellant's timely motion to reconsider sentence was withdrawn, and because the notice of appeal was not served within ten days of imposition of the sentence, this appeal is dismissed. The remittitur will be sent pursuant to Rule 221(b), SCACR.


_____, J.
FOR THE COURT

Columbia, South Carolina

cc:

Genuine Truth Banner, 375165
William J. Nowicki, Esquire
Robert Michael Dudek, Esquire
Barry Joe Barnette, Esquire
John Benjamin Aplin, Esquire
Alan McCrory Wilson, Esquire

FILED

April 25, 2018