

APPEAL FROM COMMON PLEAS REGARDING A CONVICTION IN
MUNICIPAL COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SEP 07 2018

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2018-1291

The City of Columbia, Appellant,

v.

Shasha Rawlinson, Respondent.

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS

Appellant City of Columbia respectfully requests this Court deny Respondent's Motion to Dismiss for the following reasons:

1. Appellant properly perfected its appeal in this matter.

An appealing party has ten (10) days after service to the opposing party to file its notice of appeal, certificate of service, and a copy of the underlying order with the Court of Appeals. Rule 203(b), SCACR. In this case, Appellant served Respondent with its notice of appeal on July 11, 2018 (Exhibit 1). Appellant filed its proof of service (dated July 11, 2018) with the court on July 17, 2018 (Exhibit 2). This was within the ten (10) days allotted by the rule.

Respondent argues the City's appeal should be dismissed because it did not file its proof of service on the day it filed its notice of appeal. However, Rule 203 clearly allows a party to file its

notice of appeal and supporting documents within ten (10) days after service. Under Respondent's theory, if the City filed its notice of appeal on the day it filed its proof of service (July 17, 2018), there would be no grounds for dismissal. In essence, Respondent is asking the Court to dismiss this appeal because the City filed its notice of appeal too early. Because "appellate rules should not be written or interpreted to create a trap," this interpretation cannot be correct. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004).

Additionally, while service of the notice of appeal is jurisdictional, the filing requirements are procedural.

"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 subject matter jurisdiction and results in dismissal of the appeal." (citing *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct.App.1999)). "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." (citing *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004)).

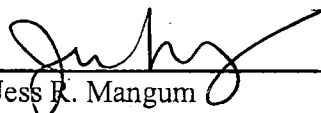
USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (emphasis added). In this case, there is no dispute that the City served its notice of appeal within the thirty (30) days allotted by Rule 203. Therefore, this Court has subject matter jurisdiction to hear the City's appeal, and the appeal should not be dismissed.

II. Respondent's second ground for dismissal is premature and more properly presented to the Court in a brief.

Respondent also argues the City's appeal should be dismissed because a retrial in this matter would subject Rawlinson to double jeopardy in violation of her due process rights. However, this

argument is premature and improperly raised in this motion. The City has not yet had the opportunity to present the issues on appeal, much less brief those issues, or provide the Court with a Record on Appeal. Additionally, Respondent has not provided the Court with any documents or affidavits in support of her position. See Rule 240(c)(3), SCACR (requiring parties to file affidavits and other documents in support of their position when the Record on Appeal has not been filed). Without knowing the issues on appeal and without having any documents before it, the Court simply has no way to rule on this.

For the reasons stated above, Appellant respectfully requests this Court deny Respondent's Motion to Dismiss.



Jess R. Mangum
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Office of the City Attorney
Post Office Box 667
Columbia, South Carolina 29202
(803) 737-4242
Attorney for Appellant

Other Counsel of Record:
Jerry Finney
The Finney Law Firm, Inc.
2117 Park Street
Columbia, South Carolina 29201
(803) 254-7408
Attorney for Respondent

EXHIBIT 1



We Are Columbia

Office of the City Attorney
Post Office Box 667 • Columbia, SC 29202 • (803) 737-4242 • Fax (803) 737-4250

July 11, 2018

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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JUL 11 2018

SC Court of Appeals

RE: City of Columbia v. Shasha Rawlinson
C/A File No.: 2017-CP-40-01699

Dear Ms. Kitchings:

Enclosed for filing is the Notice of Appeal from Common Pleas Regarding a Conviction in Municipal Court in the above referenced matter. Also enclosed is a copy of my correspondence with the court reporter, in which I requested the transcript from the lower court.

Please let me know if you have any questions or if I can be of any further assistance.

Sincerely,

Jessica R. Mangum
Assistant City Attorney

JRM/gsp
Enclosures as Stated

cc: Jerry Finney, Esquire

**NOTICE OF APPEAL FROM COMMON PLEAS REGARDING A
CONVICTION IN MUNICIPAL COURT**

THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2017-CP-40-01699

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SC Court of Appeals

The City of Columbia,

Appellant,

v.

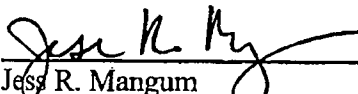
Shasha Rawlinson,

Respondent.

NOTICE OF APPEAL

The City of Columbia appeals the order of the Honorable L. Casey Manning, electronically filed on June 13, 2018, which vacated Shasha Rawlinson's municipal court conviction and dismissed her case with prejudice. Appellant received notice of the order on June 13, 2018.

July 11, 2018



Jess R. Mangum
Office of the City Attorney
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Attorney for Appellant

Other Counsel of Record:
Jerry Finney
The Finney Law Firm, Inc.
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Columbia, South Carolina 29201
(803) 254-7408
Attorney for Respondent

EXHIBIT 2



Office of the City Attorney
Post Office Box 667 • Columbia, SC 29202 • (803) 737-4242 • Fax (803) 737-4250

July 17, 2018

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
JUL 17 2018
SC Court of Appeals

RE: City of Columbia v. Shasha Rawlinson
Appellate Case No.: 2018-001291
C/A File No.: 2017-CP-40-01699

Dear Ms. Kitchings:

Enclosed for filing is the Proof of Service to Respondent and copy of proof of filing copy of the Notice of Appeal with the Clerk of Court for Richland County.

Please let me know if you have any questions or if I can be of any further assistance.

Sincerely,

Jessica R. Mangum
Assistant City Attorney

JRM/gsp
Enclosures as Stated

cc: Jerry Finney, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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L. Casey Manning, Circuit Court Judge

SC Court of Appeals

Appellate Case No.: 2018-001291
Case No. 2017-CP-40-01699

The City of Columbia Appellant,

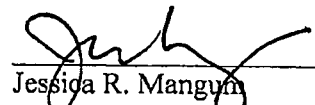
v.

Shasha Rawlinson Respondent.

PROOF OF SERVICE

I certify that I have served the *Notice of Appeal* on Shasha Rawlinson by depositing a copy of it in the United States Mail; postage prepaid it to her attorney of record, Jerry Finney, Esquire at his address, 2117 Park Street, Columbia, South Carolina 29201 on July 11, 2018.

July 11, 2018



Jessida R. Mangum
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Office of the City Attorney
Post Office Box 667
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Attorney for Appellant