

The Supreme Court of South Carolina

Terron Dizzley, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2019-000089

Lower Court Case No. 2015CP2200845

ORDER

Petitioner has served and filed a *pro se* notice of appeal challenging the denial of his motion to relieve counsel and proceed *pro se*. The notice of appeal is dismissed for three reasons.

First, petitioner has failed to provide a proof of service showing that a copy of the notice of appeal has been served on opposing counsel as required by Rule 203(d)(1)(B)(i) of the South Carolina Appellate Court Rules.

Second, based on the public case index and the letter by petitioner's counsel dated January 4, 2019,¹ it does not appear that an order has been entered denying this motion. Without the entry of an order, there is nothing which can be appealed. *Cf.* Rule 203(b)(1), SCACR (time to appeal from the court of common pleas runs from the receipt of written notice of entry of the order or judgment); *see also Upchurch v. Upchurch*, 367 S.C. 16, 624 S.E.2d 643 (2006) ("An order is not final until entered by the clerk of court; . . . Entry of the order occurs when the clerk of clerk of court files the order."), *disapproved of on other grounds by Miles v. Miles*, 393 S.C. 111, 711 S.E.2d 880 (2011).

Third, even if an order had been entered denying the motion, an appeal could not

¹ According to this letter, the circuit judge advised counsel that this motion was denied by e-mail, but the public case index fails to show that an order has been filed.

be taken from this order since it is not the final decision or judgement in this post-conviction relief case. Rule 243(a), SCACR and S.C. Code Ann. §17-27-100 (only a final decision or judgment in a post-conviction relief case is subject to appellate review); *Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006) (defining final decision or judgment in a post-conviction relief case).

Accordingly, the notice of appeal is hereby dismissed without prejudice to petitioner's ability to timely serve and file a notice of appeal once a final decision or judgment is entered. The remittitur will be sent as provided by Rule 221(b), SCACR.



FOR THE COURT C.J.

Columbia, South Carolina
January 24, 2019

cc: Mr. Terron Dizzley
Eleanor Duffy Cleary, Esquire
Office of the Attorney General