

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

The Honorable R. Lawton McIntosh, II, Circuit Court Judge

Appellate Case No. 2019-000106

RECEIVED
FEB 19 2019
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

SANDRA LINDSEY BLACK,

APPELLANT.

MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION

The State hereby moves this Court to dismiss Appellant's direct appeal based upon a lack of appellate jurisdiction. The basis for this motion is set forth below.

Background Facts

Appellant was indicted at the August 2016 term of the Greenville County Grand Jury for unlawful conduct towards a child (2016-GS-23-010729) On January 7, 2019, she appeared before the Honorable R. Lawton McIntosh and pled guilty as indicted. Appellant was represented at the plea by William G. Yarborough, III, Esquire. Judge McIntosh sentenced Appellant to thirty (30) months' imprisonment suspended upon the service of one (1) day's imprisonment and thirty-six (36) months' probation with credit for time served of one day's pretrial detention. (See Exhibit #1, Indictments & Sentencing Sheets).

On January 22, 2019, fifteen (15) days after the plea, Appellant appears to have attempted to file a *pro se* notice of appeal with this Court. (See Exhibit #2, *pro se* "Notice of Appeal" dated January 22, 2019). That *pro se* document, was received by this Court on January 25, 2019, but was not accompanied by a proof of service. In a deficiency letter dated February 7, 2019, this Court wrote plea counsel advising of deficiencies which must be corrected within ten (10) days or the appeal would be dismissed. This included requiring Appellant to serve and file a proof of service and to provide proof that the notice of appeal was filed with the Greenville County Clerk of Court. (See Exhibit #3, letter from Clerk of Court to Appellant dated February 7, 2019). On February 13, 2019, plea counsel's office submitted a "Certificate of Service" on the State which served a copy of Appellant's January 22, 2019, *pro se* notice of appeal. (See Exhibit #4, Certificate of Service dated February 13, 2019). In the cover letter accompanying the certificate of service, plea counsel explains he was unable to file a copy with the Greenville County Clerk of Court. (See Exhibit #5, cover letter dated February 13, 2019).

Discussion

The South Carolina Appellate Court Rules state, in pertinent part:

After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents **within ten (10) days after the sentence is imposed**. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. 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, 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). This Court 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 Appellant’s case, there was no proper, timely motion for reconsideration of sentence or notice of appeal served or filed within ten days after the sentence was imposed. Appellant was admittedly represented by counsel at the time she pled guilty and at the time she 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; they were nullities. *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* filings

could not operate as a notice of appeal. Additionally, even if this Court accepted the *pro se* notice of appeal on Appellant's behalf, it was not served and filed within ten days of the plea and is therefore still untimely.

Since no proper motion for reconsideration or notice of appeal was filed within ten days of Appellant's conviction, this Court has no jurisdiction over Appellant's case and must dismiss her 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 Appellant from challenging his conviction in a direct appeal, Appellant's issues can be raised in a timely post-conviction relief application.

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

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

BY: 

J. Benjamin Aplin

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 19, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
R. Lawton McIntosh II, Circuit Court Judge

Appellate Case No. 2019-000106

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SC Court of Appeals

THE STATE,RESPONDENT

v.

SANDRA LINDSEY BLACK,APPELLANT.

PROOF OF SERVICE

I, Troyeshi Brailey, Legal Coordinator, hereby certify that I have served the within *Motion to Dismiss Appeal for Lack of Jurisdiction*, dated February 19, 2019, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

William G. Yarborough, III, Esquire
Law Office of William G. Yarborough, III
522 N. Church Street
Greenville, SC 29601

I further certified that all parties required by Rule to be served have been served. This 19th day of February, 2019.

Troyeshi Brailey

Troyeshi Brailey
Legal Coordinator

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

EXHIBIT # 1

(723)
WITNESSES

A R Lindler

Greenville Police Department

9/14/2016

ARREST WARRANT NUMBER
2016A2320601867

ACTION OF GRAND JURY
TRUE BILL

Clay Tuttle

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-
NMS

010729

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2016

August

THE STATE

vs.

SANDRA LINDSEY BLACK

Indictment for

2481

UNLAWFUL CONDUCT TOWARDS A CHILD

VIOLATION § 63-05-0070

ENTERED
ACCT *RC*

FILED

DEC 05 2016

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
UNLAWFUL CONDUCT TOWARDS A CHILD

At a Court of General Sessions, convened on **AUG 28 2018** the Grand Jurors of Greenville
County present upon their oath:

That SANDRA LINDSEY BLACK did in Greenville County, between July 11, 2016 and August 22, 2016,
while being the legal custodian, parent, or guardian, place the child, B.B. date of birth 9/2/10, (1) at
unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or (2) unlawfully or
maliciously do or cause to be done any bodily harm to the child so that the life or health of the child is
endangered or likely to be endangered; or (3) willfully abandon the child. This is in violation of §63-05-0070
of South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

BAR # 77500

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

AKA: Sandra Lindsey Black

Race: WHITE Sex: F Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was TO: CHILDREN/LEGAL CUSTODIAN, UNLAWFUL NEGLECT OF CHILD OR HELPL

INDICTMENT/CASE#: 2016GS2310729

A/W#: 2016A2320601867

Date of Offense: 7/11/2016

S.C. Code § : 63-05-0070

CDR Code #: 2481

SENTENCE SHEET

6-10 year
[] CONVICTED OF or [X] PLEADS

in violation of § 63-05-0070 of the S.C. Code of Laws, bearing CDR Code # 2481

[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: [] Without Negotiations or Recommendation, [] Negotiated Sentence, [X] Recommendation by the State

ATTEST: [Signature] 102675 Conits, Ian SC Bar# [Signature] Defendant [Signature] YARBOROUGH III, WILLIAM G Attorney for Defendant [Signature] 10271 SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center, for a determinate term of 30 days/months/years or and/or to pay a fine of \$ [REDACTED]; provided that upon the service of 1 day/months/years and/or payment of \$ [REDACTED]; plus costs and assessments as applicable*; the balance is suspended with probation for 36 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[] CONCURRENT or [] CONSECUTIVE to sentence on:

[X] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. (One Day)

[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

[] Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Rows include assessments, surcharges, and fees.

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Paul B. Wickenham

Court Reporter: Johnson Smith

Obtain GED []

Attend Voc. Rehab. or Job Corp. []

May serve W/E beginning []

Substance Abuse Counseling [X]

Random Drug/Alcohol testing [X]

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: Comply w/ All DSS / Family Con

[] Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature]

Judge Code: 2102 255

Sentence Date: 11/2/19

EXHIBIT # 2



SCACRIFORM...



FORM 4
NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY THE COURT
OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
~~In The Supreme Court~~

Appeal from Greenville County
Court of General Sessions

Lawton McDiostat, Circuit Court Judge

Case number 2016 A 232 0602867

The State, Ian Curtis Respondent,

v.

h. Sandra Black Appellant.

RECEIVED

JAN 25 2019

SC Court of Appeals

NOTICE OF APPEAL
1/22/19

Sandra L. Black Appeals her conviction and sentence in this case. The sentence was imposed by the honorable Lawton McDiostat January 10, 2019. This appeal is requested due to attorney malpractice. Evidence suppressed before the Judge could have resulted in a lower sentence. Mr. Farabourgh made no attempt to inform the Judge Sandra had completed the conditions imposed. This appeal is based on the lack of service by Mr. Farabourgh.

Other Counsel of Record:

Bill Farabourgh
522 N. Church St.
Greenville SC 29601
864 326 3026

January 22 2019

To Whom It may concern,

I, Sandra L. Black am Requesting
An appeal Based on my attorney,
William Vazargh's lack of services,
malpractice. Mr. Vazargh withheld
evidence before the Judge that could
have resulted in a lower sentence
or the case being dismissed Sandra
had already completed the conditions
set forth by the Judge. Please
consider the appeal based on the
information provided. Please call
Sandra at 864 720 8079 or 864 360 7594

Sincerely,
Sandra L. Black

RECEIVED

JAN 25 2019

Sandra address
2530 E. N. St.
Greenville SC 29615

SC Court of Appeals

Black
730 E. N. St
50
Columbia SC 29405



Court of Appeals
1020 Senate St.
Columbia SC 29201

RECEIVED

JAN 25 2019
SC Court of Appeals

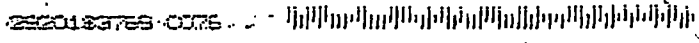


EXHIBIT # 3



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 07, 2019

Mr. William G. Yarborough, III, Esquire
522 North Church Street
Greenville SC 29601

Re: The State v. Sandra L. Black
Appellate Case No. 2019-000106

Dear Counsel:

Upon reviewing your client's notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter, or this appeal will be dismissed:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- You must provide proof that the notice of appeal was filed with the Greenville County Clerk of Court.

Very truly yours,

V. Claire Allen, Deputy
CLERK

cc: Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
Nicole Marie Simpson, Esquire
Robert Michael Dudek, Esquire
Sandra Black

EXHIBIT # 4

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County Court of General Sessions
The Honorable R. Lawton McIntosh , II Circuit Court Judge

Appellate Case No. 2019-000106

State of South Carolina.....Respondent,

v.

Sandra Lindsey Black,.....Appellant.

CERTIFICATE OF SERVICE

WILLIAM G. YARBOROUGH III
522 North Church Street
Greenville, South Carolina 29601
(864) 331-1612

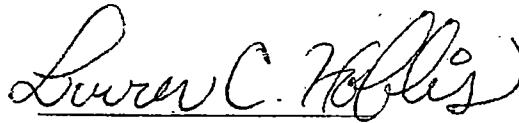
COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Notice of Appeal was served upon the Respondent via U.S. mail with sufficient postage attached and addressed as follows:

Senior Assistant Deputy Attorney General J. Benjamin Aplin
South Carolina Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

This 13th day of February, 2019.



Lauren C. Hobbis, #103190
William G. Yarborough III, Attorney at Law, LLC

EXHIBIT # 5

LAW OFFICE OF WILLIAM G. YARBOROUGH, III

522 N. Church St. Greenville, SC 29601 • Office: (864) 331-1612 • wgyarborough@gmail.com

February 13, 2019

The Honorable Jenny Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: *The State of South Carolina v. Sandra Black*
Appellate Case No. 2019-000106

Dear Ms. Kitchings,

This letter is to confirm that my office is in receipt of the Court's letter regarding the deficiency in the Notice of Appeal in the above-captioned case. Due to the Notice of Appeal having been filed *pro se*, my office only has a copy of the Notice of Appeal filed with your office, and I also do not have a proof of service to show it was served upon the Respondent or filed with the Greenville County Clerk of Court. Today, I served a copy of the Notice of Appeal upon the Respondent. Enclosed you will find a certificate of service showing that the Respondent was served by U.S. mail. I was unable to file a copy of same with the Greenville County Clerk of Court's Office because the Clerk's Office would not accept a copy of the Notice of Appeal that had already been marked as received in your office.

Thank you for your time and attention to this matter. Please do not hesitate to contact me should our office need to provide any additional information.

Sincerely,



William G. Yarborough, #10271

Enclosures

cc: Senior Assistant Deputy Attorney General J. Benjamin Aplin
The Honorable Paul B. Wickensimer, Clerk of Court-Greenville County
Robert M. Dudek, Chief Appellate Defender, SCCID
Ms. Sandra Black

SEARCHED
SERIALIZED
INDEXED
FILED
FEB 13 2019
CLERK OF COURT
SCOTT'S BLVD
GREENVILLE, SC 29601



ALAN WILSON
ATTORNEY GENERAL

February 19, 2019

William G. Yarborough, III, Esquire
Law Office of William G. Yarborough, III
522 N. Church Street
Greenville, SC 29601

RECEIVED
FEB 19 2019
SC Court of Appeals

Re: The State v. Sandra Lindsey Black
Appellate Case No. 2019-000106

Dear Mr. Yarborough:

I am enclosing two (2) copies of the Motion to Dismiss Appeal Due to Lack of Jurisdiction in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/tb
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Sandra Black
Victim Advocacy Division