

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Cherokee County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case Tracking No. 2019-00104

JUN 26 2019

SC Court of Appeals

The State,

Respondent,

vs.

Ronnie LeShanon Bonner,

Appellant.

MOTION TO DISMISS

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

The State has received the Notice of Appeal and Affidavit of Service by Mail in the above referenced case, both of which are on file with this Court. In reviewing the provided Proof of Service, the appeal appears to have been served out of time. The Notice of Appeal indicates Appellant received written notice of entry of the Order denying his motion to reconsider sentence on June 6, 2019. While he filed his Notice of Appeal with the Clerk of Court for Cherokee County on June 14, 2019, based on his Affidavit of Service by Mail on file with the Court he failed to serve his Notice of Appeal on the State until June 18, 2019. The service took place more than ten days after he acknowledged receipt of the Order denying his motion to reconsider.

II.

Pursuant to the Appellate Court Rules:

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(b)(2), SCACR (emphasis added). Pursuant to Rule 263, SCACR, if the tenth day falls on a weekend, then the date for required service would be the following Monday. In the instant case, because he received written notice on June 6, service was required by June 16, which was a Sunday. Therefore, service was required to be completed by mailing no later than June 17, 2019.

Because no proper notice of appeal was served within ten days of Appellant's conviction, this Court has no jurisdiction over Appellant's case and must dismiss his appeal. See Hill v. South Carolina Dep't 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."); Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) ("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. Hinson, 303 S.C. 92, 399 S.E.2d 422 (1990) (finding since appellant

failed to serve a notice of intent to appeal within ten days of receipt of the order denying him a new trial, the Court was without jurisdiction to consider the merits of that order); State v. Devore, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) (“in the absence of a timely served notice of appeal, this court has no jurisdiction”); Jean Hoefer Toal et al., Appellate Practice in South Carolina 122 (3d ed. 2016) (“If a party fails to [timely serve the notice of appeal], the appellate court has no authority or discretion to rescue the delinquent party by extending or ignoring the deadline because the appellate court lacks jurisdiction over the matter.” (emphasis added) (collecting cases)); see also, Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985); Miller v. State, 269 S.C. 113, 236 S.E.2d 422 (1977). The State also may not consent to appellate jurisdiction because the parties may not consent to jurisdiction if it is not properly acquired. Tatnall v. Gardner, 350 S.C. 135, 564 S.E.2d 377 (Ct. App. 2002); Hunter v. Boyd, 203 S.C. 518, 525, 28 S.E.2d 412, 416 (1943).

III.

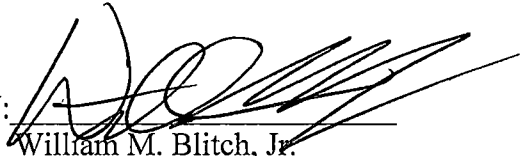
WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion; dismiss the underlying appeal based on the untimely service of the notice of appeal and the Court’s lack of jurisdiction; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General

BY:



William M. Blich, Jr.
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

June 26, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case Tracking No. 2019-001024

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SC Court of Appeals

The State,

Respondent,

vs.

Ronnie LeShanon Bonner,

Appellant.

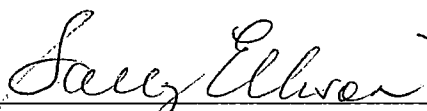
PROOF OF SERVICE

I, Sally Ellison, certify that I have served the Motion to Dismiss on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Christopher P. Thompson, Esquire
Chris Thompson Law Firm
Post Office Box 70
Mayo, South Carolina 29368

I further certify that all parties required by Rule to be served have been served.

This 26th day of June, 2019.



SALLY ELLISON
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

June 26, 2019

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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: State v. Ronnie L. Bonner
Appellate Case Tracking No. 2019-001024

Dear Ms. Kitchings:

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

Sincerely,

William M. Blich, Jr.
Senior Assistant Deputy Attorney General

Enclosures

cc: Christopher P. Thompson, Esquire
Victim Advocacy Division