

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUL 12 2019
SC Court of Appeals

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

The State,

Respondent,

vs.

Ronnie LeShanon Bonner,

Appellant.

REPLY

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

I.

In addition to acknowledging receipt of the underlying order in this appeal on June 6, 2019 in his filed Proof of Service, counsel for Appellant has acknowledged its receipt via email on June 6 in his Return to the State's Motion to Dismiss. He now alleges that he did not receive written notice of the entry of the order, however, until he actually opened the email and read the attachment on a computer screen. His argument that, as a result of his choice not to read the email until June 8, his service of the Notice of Appeal was timely because he served it within ten days of reading the order is without merit and clearly inconsistent with the Appellate Court Rules.

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). In analyzing the Rule relative to notice via email, the South Carolina Supreme Court found notice via email was proper. Further, the Court explicitly stated: “we find Petitioners’ **receipt** of the email triggered the time to appeal.” Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC, 422 S.C. 211, 217, 810 S.E.2d 856, 859 (2018) (emphasis added). The Court continued: “Accordingly, we find the Court of Appeals correctly determined the time to appeal was triggered on the day the parties **received** the email” Id. (emphasis added). Nothing in the Rule, nor in the Supreme Court’s cases interpreting the Rule, requires a party to have read the written notice—it merely requires receipt of the notice.

Counsel’s own inaction should not be found to toll or extend the time period for service of the Notice of Appeal. See Canal Ins. Co. v. Caldwell, 338 S.C. 1, 6, 524 S.E.2d 416, 418 (Ct. App. 1999) (finding, in a similar case relying on notice via fax, a party’s inaction in obtaining the order did not toll the time for service and holding because a party’s “attorney waited a month to request a copy of the order, his Motion for Reconsideration and Amendment of Judgment, . . . was not timely” when he had received notice via fax). Had Appellant’s counsel received the notice via U.S. Postal Service on June 6, just as he received the email, but chose not to read it until the 8th as alleged, he still would have to admit receiving notice on June 6 and his time for service would begin on June 6. Nothing changes because the notice is received via email (which,

practically speaking, he would be more likely able to access while out of the office than the copy which came via the U.S. Postal Service).¹

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 Hoefler 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

¹ It is also telling that counsel was able to timely file a copy of the Notice of Appeal with the Clerk of Court for Cherokee County on June 14, but failed to serve the State.

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: 

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ATTORNEYS FOR RESPONDENT

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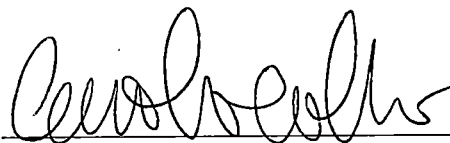
PROOF OF SERVICE

I, Caroline Collins, certify that I have served the Reply 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 12th day of July, 2019.



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



ALAN WILSON
ATTORNEY GENERAL

July 12, 2019

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 Reply 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

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