

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Dorchester County  
Honorable Maite Murphy, Circuit Court Judge  
Appellate Case Tracking No. 2019-001668  
\_\_\_\_\_

**RECEIVED**  
OCT 10 2019  
SC Court of Appeals

The State,

Respondent,

vs.

Carlyle H.M. Cohen, Jr.,

Appellant.

\_\_\_\_\_  
**MOTION TO DISMISS**  
\_\_\_\_\_

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

I.

In Appellant's Notice of Appeal, he indicated counsel received a copy of the underlying order denying his Motion to Reconsider on September 12, 2019. While he indicated he filed a copy of his Notice of Appeal with the clerk of court on September 16, 2019, his Proof of Service indicates he served the State on September 30, 2019.<sup>1</sup>

II.

Appellant had ten days from September 12, 2019, in which to serve the Notice of Appeal on the State. By his Proof of Service, he did not serve the State until at least eighteen days after receipt of the order denying his Motion to Reconsider. The appeal in this case is untimely and

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<sup>1</sup> The State received two Proofs of Service regarding the Notice of Appeal in this case. One indicates service occurred on September 30, 2019 and the other indicates it occurred on October 1, 2019. Either is untimely.

should be dismissed. See State v. Devore, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) (“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.” (quoting USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008))); Rule 203(b)(2), SCACR (“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. 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.”).

WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, and dismiss this appeal as untimely; 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

October 10, 2019

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The State,

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Appellant.

**PROOF OF SERVICE**

I, Caroline Collins, certify that I have served the Motion to Dismiss on Appellant by having delivered a copy of same addressed to:

Myesha L. Brown, Esquire  
The MLB Law Firm  
712 North Cedar Street  
Summerville, South Carolina 29483

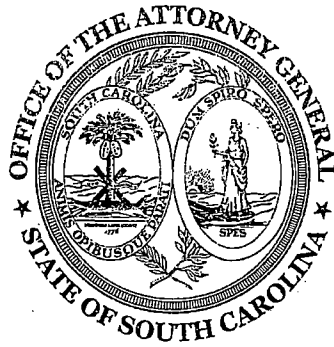
Robert M. Dudek, Esquire  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, South Carolina 29211

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

This 10<sup>th</sup> day of October, 2019.



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



ALAN WILSON  
ATTORNEY GENERAL

October 10, 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. Carlyle Cohen

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: Myesha L. Brown, Esquire  
Robert M. Dudek, Esquire  
Victim Advocacy Division