

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

Appeal from Horry County  
Honorable William H. Seals, Jr., Circuit Court Judge  
Appellate Case Tracking No. 2019-001670

The State,

Respondent,

vs.

Khouri D. McKellop,

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 explains he pled guilty and was sentenced on September 12, 2019. According to his Certificate of Service, the Notice of Appeal was served on September 24, 2019.

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 within ten days of the date of his sentence.<sup>1</sup> See 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

<sup>1</sup> In his Notice of Appeal, Appellant indicates he did not receive the sentencing sheet until September 23, 2019, and has "not received a written notice of entry of this Judgment as of

respondents within ten (10) days after the sentence is imposed.”). The appeal in this case is untimely and 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))).

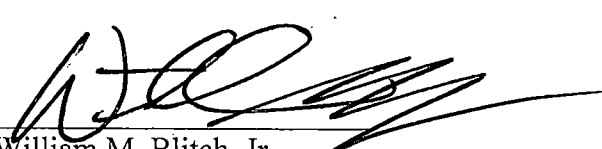
WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, and dismiss this appeal as untimely; and for such other and further relief as the Court may deem just and proper.

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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September 24, 2019.” However, pursuant to Rule 203(b)(2), SCACR, it is imposition of the sentence which begins the time for the service of a Notice of Appeal.

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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:

Kenneth B. Massey, Esquire  
Law Group South, LLC  
200 Elm Street  
Conway, South Carolina 29526

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

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The Honorable Jenny A. Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: State v. Khouri McKellop  
Appellate Case Tracking No.2019-001670

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: Kenneth B. Massey, Esquire  
Robert M. Dudek, Esquire  
Victim Advocacy Division