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Apr 21 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
Honorable William A. McKinnon, Circuit Court Judge

The State,

Respondent,

vs.

Robert Worthy,

Appellant.

AMENDED RETURN TO MOTION TO FILE OUT OF TIME

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

Appellant was convicted and sentenced on June 6, 2019. Thereafter, he filed a Motion to Reconsider, which Judge McKinnon denied by Order dated December 2, 2019. In his Motion to File out of Time he indicates he received the Order on December 10, 2019. Appellant's Proof of Service indicates it was not served on the State until March 12, 2020. Appellant filed a Motion to File out of Time in which he indicates he believed the Notice of Appeal had been served, but apparently was mistaken.

The requirement of service is jurisdictional. 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.”).

The State certainly understands and empathizes with counsel’s situation. The State notes there are other means to provide Appellant relief. Respondent will leave the decision and relief to the Court’s discretion.

Respectfully submitted,

ALAN WILSON
Attorney General

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

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

ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

I, Caroline Collins, certify that I have served the Amended Return to Motion to File out of Time on Appellant by emailing a copy to **Stanley L. Myers** and **Lester M. "Gill" Bell, Jr.** at the email addresses provided in AIS.

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

This 21st day of April, 2020.



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

Caroline Collins

From: Caroline Collins
Sent: Tuesday, April 21, 2020 4:11 PM
To: 'stanley@mttlaw.com'; 'Lester M. "Gill" Bell, Jr'
Cc: William Blich
Subject: State v. Robert Worthy
Attachments: WORTHY Robert - Amended Return to Motion to File out of Time (02262371xD2C78).PDF

Good Afternoon Mr. Myers and Mr. Bell,

Attached please find a copy of the State's Amended Return to Motion to File out of Time in the State v. Robert Worthy. This document will be submitted to the Court of Appeals through the AIS system.

If you will, please reply to confirm receipt of this email.

Thank you!

Caroline Collins

Administrative Coordinator
South Carolina Attorney General's Office
P: (803) 734-3723

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