

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Apr 21 2020**

**SC Court of Appeals**

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

The State,

Respondent,

vs.

Robert Worthy,

Appellant.

\_\_\_\_\_  
**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 Proof of Service, Appellant does not indicate when he received the Order. However, in his Motion to File out of Time he indicates he received it 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.

Unfortunately, this Court does not have jurisdiction to hear this appeal because a timely Notice of Appeal was not served. 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. However, there are other means to provide Appellant relief. This Court should dismiss the appeal and allow Appellant to pursue other avenues of relief.

WHEREFORE, Respondent prays that the Court hold this matter in abeyance until ruling on this motion, deny the Motion to File out of Time, and dismiss the appeal for 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 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 21<sup>st</sup> day of April, 2020.



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

**Caroline Collins**

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**From:** Caroline Collins  
**Sent:** Tuesday, April 21, 2020 10:24 AM  
**To:** 'stanley@mttlaw.com'; 'gill@mttlaw.com'  
**Cc:** William Blicht  
**Subject:** State v. Robert Worthy  
**Attachments:** WORTHY Robert - Return to Motion to File out of Time (02261622xD2C78).PDF

Good Morning Mr. Myers and Mr. Bell,

Attached please find a copy of the State's 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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