

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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**RECEIVED**  
**Jul 31 2020**  
**SC Court of Appeals**

Appeal from Horry County  
Honorable Alexander S. Macauley, Circuit Court Judge  
Appellate Case Tracking No. 2020-000081

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The State,

Appellant,

vs.

John Alexander Webb,

Respondent.

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**MOTION TO SERVE AND FILE NOTICE OF CROSS APPEAL OF MATTER OUT OF TIME**

Respondent, through undersigned counsel, respectfully requests that this Court accept service and filing of Respondent's Notice of Appeal out of time for the following reasons:

I.

Respondent, through his trial counsel, filed a Notice of Appeal with this court after Respondent was convicted at a jury trial. On July 8, 2019, Respondent, through undersigned counsel, notified this court and the Attorney General that she would be the attorney of record for the appeal. Shortly thereafter, undersigned counsel notified this court and the Attorney General by phone and email that there was a pending post-trial motion at the trial level. Undersigned counsel filed a motion to hold the appeal in abeyance and received an order dated August 7, 2019 granting that motion.

Respondent's post trial motion was ultimately granted, which changed his guilty verdict to not guilty. The State filed a motion to reconsider, and that motion was denied December 20, 2019. At that time, undersigned counsel withdrew the Notice of Appeal with this court. The State then filed their Notice of Appeal on January 15, 2020.

It is exceedingly rare that a criminal defendant would have occasion to file a cross-appeal, and undersigned counsel was under the mistaken belief that Respondent's cross-appeal should properly be contained within Respondent's Answer to Appellant's Initial Brief. Due to several delays outlined below, undersigned counsel did not realize that mistake until now.

There have been several delays of this case, mainly due to the COVID-19 pandemic. As for the State, there was confusion when requesting the transcript, and as a result, they requested it out-of-time. It was delayed again when the State filed a Motion to Serve and File Initial Brief of Appellant and Designation of Matter Out of Time. As for undersigned counsel, there has been confusion with

telecommuting, having to provide home therapies for counsel's minor son, and other issues resulting from the COVID-19 pandemic.

Due to the delays of the case, undersigned counsel in preparing Respondent's answer is just now aware of her failure to comply with Rule 203(c), which states:

A respondent may institute a cross-appeal by serving a notice of appeal on all adverse parties, or in the case of an appeal from the administrative tribunal, by serving a notice of appeal on the agency, the administrative law court (if it has been involved in the case) and all parties of record, within five (5) days after receipt of appellant's notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires.

Undersigned counsel respectfully requests that this Court permit Respondent to file and serve his Notice of cross-appeal in the interest of justice, fairness, and judicial economy. It is in the interest of all parties to have all claims heard in this Court. Undersigned counsel believes this court and the State were aware of Respondent's intent to appeal as she timely filed the original Notice of Appeal with the court and only failed in re-filing it as a cross-appeal pursuant to Rule 203(c). Furthermore, it is in the interest of justice that this matter be heard by this Court and not in a separate action for post-conviction relief at a later date.

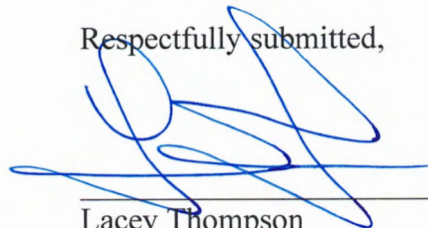
Lastly, undersigned counsel did speak by phone with Attorney General William Blich, who informed her he did not oppose this motion.

II.

This request is not intended for purposes of delay but rather to allow the undersigned to ensure that Respondent's claims are fully heard and to ensure that this matter is properly briefed, researched, and presented to this Court.

For the foregoing reasons, Respondent respectfully requests that this Court accept service and filing of Respondent's Notice of Appeal out of time.

Respectfully submitted,



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July 31, 2020.