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SC Court of Appeals

ALAN WILSON
ATTORNEY GENERAL

January 28, 2021
(Via Email Submission Only)

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

Re: *The State v. Javaline Tyree Dawkins*
Appeal from Horry County
Appellate Case No. 2020-001714

Dear Ms. Kitchings:

It has come to my attention that this Court dismissed the referenced appeal on January 11, 2021. The Court found the December 23, 2020 service was not timely when sentencing occurred on November 6, 2020. On January 12, 2021, counsel for Mr. Dawkins filed a motion to reinstate. Please accept this letter in lieu of a formal return to the motion to reinstate. The State agrees with the motion and urges the Court to reinstate the appeal for this reason: upon review, it appears a prior notice of appeal was timely served which vested the appellate court with jurisdiction. In support of this position, the State would respectfully show its reasoning in the following paragraphs.

Judge Nettles imposed sentence on November 6, 2020. Counsel for Mr. Dawkins filed a notice of appeal and a post-trial motion together with the Horry County Clerk of Court on November 13, 2020. Importantly, both the notice and the motion were served on the State on that date by hand delivery. (See Motion, Exhibit A). The timely service of the notice would normally transfer jurisdiction. (See Rule 203(b)(2), SCACR and Rule 205, SCACR).

Further, though counsel filed the notice and certificate of service in the Horry County Clerk's Office, it does not appear that he filed with this Court. The Court may, however, take judicial notice of the November 13, 2020 certificate of service and notice of intent to appeal as filed in the lower court record and/or allow the late filing of the notice. *See generally State v. Devore*, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016) (acknowledging it is timely service of the notice that affects jurisdiction).

The State also observes that the post-trial motion was timely filed. In fact, an order has been issued after a hearing, though there is a contest as to the completeness of the proceeding below. (See Motion, pp. 1-2; see also Rule 203(b)(2), SCACR and Rule 29(a), SCRCrimP).

To avoid a jurisdictional challenge, and to have the post-trial motions/arguments fully addressed, the State respectfully submits that a remand would be appropriate to allow additional proceedings in circuit court regarding the post-trial motion. Alternatively, the motion to reinstate could be granted and the November 13, 2020 notice dismissed without prejudice, again allowing the post-trial motion to be resolved without a jurisdictional challenge or question. Upon completion of the post-trial proceedings, a new notice could be served and filed. (See Rule 203(b)(2), SCACR and Rule 29(a), SCRCrimP).

The notice of appeal from December 23, 2020 may be dismissed as premature.

Therefore, the State respectfully submits the Court should recognize the properly served notice from November 13, 2020 and grant the motion to reinstate. The State also respectfully suggests that the Court either 1) order a remand to address the post-trial motion; or 2) dismiss the November 13, 2020 notice without prejudice and allow the post-trial motion proceedings to be completed before the service and filing of a new notice of intent to appeal. The December 2020 notice should be dismissed as premature.

Sincerely,

s/Melody J. Brown

Melody J. Brown
Senior Assistant Deputy Attorney General

cc: Thomas C. Brittain, Esq., (via email only)
Robert M. Dudek, Esq., (via email only)
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Angela Bennett

From: Angela Bennett
Sent: Thursday, January 28, 2021 3:33 PM
To: 'tommyb@brittainlawfirm.com'; 'RDudek@sccid.sc.gov'; 'livesayn@horrycounty.org';
'helmsc@horrycounty.org'
Cc: Melody Brown
Subject: The State v. Javaline Tyree Dawkins
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Counsel, please find attached the State's letter in response to the motion to reinstate in the matter of State v. Javaline Tyree Dawkins. The letter will be filed with the Court of Appeals today's date.

Thank you,

Angela Bennett Brown
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