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**Feb 03 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeal

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APPEAL FROM HORRY COUNTY  
Court of General Sessions

The Honorable Michael G. Nettles

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INDICTMENT NOS: 2019GS2600254  
2019GS2600255  
2019GS2600256

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State of South Carolina.....Respondent,

v.

Javaline Tyree Dawkins.....Appellant.

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**MOTION TO RULE ON JURISDICTION**

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NOW COMES Thomas C. Brittain, Esq., trial attorney for the Defendant Javaline Tyree Dawkins. Javaline Tyree Dawkins was convicted of murder, kidnapping, and possession of weapon during violent crime. The sentence was imposed by the Honorable Michael G. Nettles, on November 6, 2020, the same day the jury returned its verdict on these charges.

That Defendant filed timely post-trial motions and a notice of intent to appeal in the lower court of General Sessions on November 13, 2020. That Judge Michael Nettles, the State Prosecutor, Defense Counsel, and Defendant Dawkins appeared via a virtual WebEx hearing on November 24, 2020. The Defendant's post-trial motions were heard. That Judge Nettles did not make a ruling on November 24, 2020.

That Defendant Dawkins was already at Kirkland Correctional Institute on November 24,

2020. As the hearing progressed, Defendant Dawkins wanted and requested to address the Court directly. Counsel for Defendant did not want Defendant Dawkins to speak until Counsel could review his comments. That it was understood by Defense Counsel that it was agreed to by each participating party that Defendant Dawkins could address the court with his comments once reviewed by his counsel; and then a meeting and a presentation to the Court was to take place (by WebEx or video) prior to Judge Nettles submitting his final Order.

That, it was much more difficult to arrange communication between Defense Counsel and the Defendant at Kirkland Correctional Institute than at J. Reuben Long Detention Center. That Judge Nettles gave written notice denying Defendant's post-trial motions on December 22, 2020 via electronic delivery and attached a copy of the Order of Denial (unsigned). That Counsel received comments from Defendant Dawkins and submitted this written correspondence to the court on January 4, 2021 for consideration.

Immediately upon the receipt of the written notice via electronic delivery of the denial of Defendant's post-trial motions on December 22, 2020, Defendant, by and through his undersigned counsel, properly mailed on December 23, 2020, and filed a Notice of Intent to Appeal (within 10 days) and properly served a copy of the Notice of Intent unto the lower court and the State's Prosecuting Attorneys.

That Defense Counsel received a notice of dismissal of the Appeal on January 11, 2021; however, counsel alleges this dismissal was in error. That pursuant to South Carolina Rules of Appeal Rule 203(2) Appeals from the Court of General Sessions states "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; and further the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or

order". That Defense Counsel filed a Motion to Reinstate the Appeal on January 12, 2021. That, to Defendant's knowledge, it has not been ruled upon by the Appellate Court; however, it has been requested to be reinstated by Senior Assistant Deputy Attorney General of South Carolina on January 28, 2021.

That, Defense Counsel was never served a copy of the signed or filed Order Denying Post-trial motions. That Defense Counsel filed a Motion to Reconsider the Order Denying of Post-Trial Motions in Horry County General Sessions on January 25, 2021, requesting the court reconsider its order denying Defendant's post trial motions based on the above facts and events, and requesting that Defendant Dawkins seeks an opportunity to be heard prior to a Court ruling on his post-trial motions. That a WebEx hearing is scheduled on February 9, 2021 to hear Defendant's Motion to Reconsider the; however, the State prosecutors have objected to the hearing moving forward based on jurisdictional issues. Defense Counsel conferenced with Judge Nettles, the Attorney General Melony Brown, and State Prosecutor and it was agreed that Defense Counsel would seek an Order from the Appellate Court to remand for the purposes of conducting a hearing on post-trial motions.

To avoid a jurisdictional challenge, and to have the post-trial motions/arguments fully addressed, the Attorney General respectfully submitted to the Appellate Court, by letter on January 28, 2021 the following: 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.

WHEREFORE, Defendant Dawkins has a pending motion to reinstate his appeal in the South Carolina Appeals Court and also has a pending motion to reconsider the denial of post-trial motions in the Horry County General Sessions court and hereby seeks an order from the Appellate Court to Rule on whether this court has jurisdiction over this case at this stage or if the lower court can move forward with Defendant's Motion to Reconsider the Denial. Therefore, Defendant respectfully requests an order for: a remand to allow additional proceedings in circuit court regarding the post-trial motion (motion to reconsider); or the motion to reinstate could be granted and the November 13, 2020 notice dismissed without prejudice, again allowing the post-trial motion (motion to reconsider) 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 – allowing Defendant opportunity to file a Notice of Appeal once the Motion to Reconsider has been ruled upon.



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Dated: February 3, 2021