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S.C. SUPREME COURT

From: [Tara Shurling](#)
To: [Supreme Court Filings](#)
Cc: [Benjamin Limbaugh](#)
Subject: Julian Young, Respondent/Petitioner v State, Petitioner/Respondent.
Date: Monday, March 8, 2021 10:41:25 PM

Dear Mr. Shearouse:

My Return to the State's Petition for Writ of Certiorari, and my Petition for Writ of Certiorari in Petitioner's cross appeal are due for service and filing on today's date. Unfortunately, I have reached the conclusion that I have no choice but to petition the court to dismiss the Petitioner/Respondent's appeal for failure to serve and file a timely NOA. It was my intent to file a Petition to Dismiss in this matter today and I have the petition drafted for that purpose. Regrettably, I had to leave my office today to go and turn in a 15-year-old juvenile client to the Sheriff's Department in a homicide case. When I returned to my office later, my administrative assistant had left for the day and I discovered that I had inadvertently been locked out of my office. For that reason, I am submitting the request to dismiss the State's appeal by way of the correspondence at this time. Tomorrow morning I will submit my request in Petition format. For now, I will state as simply as possible the basis for this request.

Following the Order granting relief in this case, Petitioner/Respondent filed a Rule 59(e) Motion to Alter or Amend. Thereafter, opposing counsel notified me he was withdrawing his motion. He in fact filed a Motion to Withdraw his 59(e), but did not initially provide the Court with a proposed Order or request a hearing on said motion. The state filed its NOA from Judge Brown's order granting a new trial in this case while the Rule 59(e), SCRCR, motion and the Motion to Withdraw it, were still pending. In the subsequent Order granting the Motion to Withdraw, Judge Brown expressly found that the NOA filed in this matter by the State was prematurely filed and directed the Petitioner/Respondent to file their NOA within 30 days of that order should they wish to appeal the Order granting relief. The state did not file a 59(e) disputing that finding by Judge Brown, nor did they file a new NOA as directed by his Order. Neither did Petitioner/Respondent appeal the finding regarding the timeliness of the NOA filed before an Order was entered on the pending 59(e) motion or their motion to withdraw the same. All the State had to do to preserve their right to appeal was to refile their NOA as per the express instructions of the Court. Having failed to do so, Petitioner submits their appeal is not properly before the Court and is jurisdictionally barred.

Undersigned Counsel's Petition to follow tomorrow will present the Court with copies of any relevant documents not contained in the Appendix previously filed by Petitioner/Respondent. In light of his request for the State's appeal to be dismissed as untimely filed, Respondent/Petitioner asks that the deadline for filing his Return to the State's Petition, and his Petition for Writ of Certiorari in his cross-appeal, be stayed pending the Court's ruling on his Petition for Dismissal of the State's appeal. Undersigned Counsel would ask for ten (10) days to file these pleadings in the event of an adverse ruling on this request. In the event the State's appeal is dismissed, the cross/appeal will become mute.

Respectfully,

Tara Dawn Shurling
Attorney at Law
Sent from my iPhone