

# The Supreme Court of South Carolina

Brian K. Stevens, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-000528

Lower Court Case No. 2011-CP-30-00407

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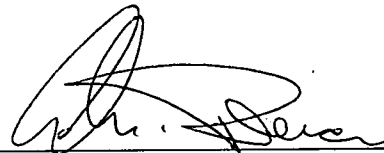
## ORDER

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Petitioner has filed a *pro se* notice of appeal from the order of dismissal dated April 16, 2012. This notice of appeal, which is dated March 13, 2013, was served on opposing counsel on April 1, 2013. Petitioner's counsel has advised this Court that he received written notice of entry of this order on or about April 28, 2012.

The time to serve the notice of appeal on opposing counsel is a jurisdictional requirement and this time may not be extended. Elam v. South Carolina Dept. of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004); Rule 263(b) of the South Carolina Appellate Court Rules (SCACR).

Since the notice of appeal has not been served within the time specified by Rules 243(b) and 203(b)(1), SCACR, this matter is dismissed, and the remittitur will be sent as provided by Rule 221, SCACR. To the extent petitioner may be seeking a belated review under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), petitioner is advised that that relief must be sought by filing a new application for post-conviction relief in the circuit court. Cf. See King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) (discussing appellate procedure to be followed depending on findings of PCR judge on the Austin claim).



FOR THE COURT

J.

Columbia, South Carolina

April 29, 2013

cc: Gary Lewis Williams, Esquire  
Salley W. Elliott, Esquire  
Mr. Brian Keith Stephens, 131066