

The Supreme Court of South Carolina

Jeffrey Clegg, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-000570

Lower Court Case No. 2012-CP-46-00075

ORDER

This post-conviction relief case involves a guilty plea that was entered in 1988. By a final order of dismissal dated January 28, 2013, the circuit court dismissed this case finding it was barred by the statute of limitations.

Petitioner has filed two notices of appeal from the final order of dismissal. The first notice of appeal is dated February 23, 2013. While this notice of appeal indicates that a copy was served on the clerk of the circuit court, it was not accompanied by a proof of service showing that a copy was served on opposing counsel.

By letter dated March 21, 2013, this Court requested a proof of service showing that the notice of appeal had been served on opposing counsel. Thereafter, petitioner filed a second notice of appeal and this notice of appeal indicates that it was served on opposing counsel on March 27, 2013.

By letter dated April 3, 2013, this Court requested that petitioner advise this Court of when he received written notice of entry of the final order of dismissal. In a document entitled "Motion of Notice to the Court," petitioner has indicated that this date was on or about February 21, 2013.

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

appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.”).

In the present case, petitioner has failed to establish that either notice of appeal was timely served on opposing counsel as required by Rules 243(b) and 203(b)(1), SCACR. Therefore, this matter must be dismissed.

Further, petitioner has failed to provide an adequate explanation under Rule 243(c), SCACR.

Accordingly, this matter is dismissed and the remittitur will be sent as provided by Rule 221(b), SCACR.

Finally, petitioner has filed a motion asking that this Court remand this matter to the circuit court for an evidentiary hearing. In effect, he is asking this Court to reverse the order on appeal despite the fact that the notice of appeal has not been timely served. The motion is denied.



FOR THE COURT C.J.

Columbia, South Carolina
April 30 2013

cc: James Rutledge Johnson, Esquire
Mr. Jeffrey S. Clegg, #276457