

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN E. MILLER,	§	
	§	No. 418, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9712003463
Appellee.	§	

Submitted: September 8, 2008
Decided: September 24, 2008

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 24th day of September 2008, upon consideration of the notice to show cause and the appellant’s response to the notice, it appears to the Court that:

(1) On August 21, 2008, the appellant, John E. Miller, filed a notice of appeal from a purported “implied order of the Superior Court” dated August 20, 2008 in Miller’s criminal case *State v. Miller*, Cr. ID No. 9712003463. An order dated August 20, 2008 does not appear on the Superior Court docket in Miller’s criminal case.¹

¹ The only 2008 order listed in Miller’s criminal case issued on February 28, 2008, when the Superior Court denied a related petition for a writ of habeas corpus. *Miller v. Phelps*,

(2) On August 27, 2008, the Clerk issued a notice directing that Miller show cause why this appeal should not be dismissed for the Court's lack of jurisdiction. In his response to the notice to show cause, Miller contends that his February 28, 2008 postconviction motion was impliedly denied on August 20, 2008, due to the Superior Court's failure to consider the motion.

(3) Under the Delaware Constitution, this Court may only review a final judgment in a criminal case.² Miller's appeal is not from a final judgment, and it thus fails to invoke the jurisdiction of this Court.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

Del. Super., C.A. No. 08M-02-081, Slights, J. (Feb. 28, 2008) (order). Miller filed an appeal from that order. The order was affirmed. *Miller v. State*, 2008 WL 2137936 (Del. Supr.).

² Del. Const. art. IV, § 11(1)(b).