

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HERMAN PRICE, JR.,	§	
	§	No. 367, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0708028224
Appellee.	§	

Submitted: August 22, 2008

Decided: October 2, 2008

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

ORDER

This 2nd day of October 2008, upon consideration of the notice to show cause, the appellant's response to the notice, the State's answer to the response, and the appellant's letter dated August 22, 2008, it appears to the Court that:

(1) On June 16, 2008, the appellant, Herman Price, Jr., pled guilty to Assault in the Second Degree plus other offenses and was sentenced.¹ On the assault conviction, Price was sentenced to three years at Level V imprisonment suspended after ten months for two years at Level II probation.²

¹ Price's other offenses were traffic violations.

² A corrected sentence order was issued on June 30, 2008, to remove an inapplicable transportation fee.

(2) On July 21, 2008, Price, acting *pro se*, filed an untimely notice of appeal from his June 16, 2008 guilty plea and sentencing. A timely notice of appeal should have been filed on or before July 16, 2008.³ On July 23, 2008, the Clerk issued a notice directing that Price show cause why the appeal should not be dismissed as untimely.

(3) In his response to the notice to show cause, Price stated that his appeal was not timely filed because staff at the prison law library had misinformed him that he had sixty days to file the appeal. In his letter dated August 22, 2008, Price adds that his defense counsel advised him on June 16, 2008, that he could not file an appeal.

(4) In its answer to Price's response, the State correctly observes that the Court has expressly rejected ineffective assistance of prison library personnel as a basis to excuse an untimely appeal.⁴ Nonetheless, the State suggests, and we agree, that under the circumstances of this case, *i.e.*, wherein Price was represented by counsel with a continuing obligation,⁵ this matter should be remanded to the Superior Court to determine if Price's counsel consulted with Price regarding an

³ See Del. Supr. Ct. R. 6(a)(ii) (providing that a notice of appeal must be filed within thirty days after a sentence is imposed in a direct appeal of a criminal conviction).

⁴ *E.g.*, *Brown v. State*, 2007 WL 851326 (Del. Supr.); *Brown v. State*, 2004 WL 1535757 (Del. Supr.); *Lloyd v. Snyder*, 2000 WL 975090 (Del. Supr.); *Smith v. State*, 1996 WL 526165 (Del. Supr.).

⁵ See Del. Supr. Ct. R. 26(a) (providing for continuing obligation of and representation by counsel on appeal).

appeal and whether Price requested that counsel file an appeal.⁶ Moreover, in the interest of justice, the Court agrees with the State that if the Superior Court determines that Price requested that his counsel file an appeal, the Superior Court should vacate the June 16, 2008 sentencing order and resentence Price, with the assistance of counsel, so that a timely appeal might be filed.⁷

NOW, THEREFORE, IT IS ORDERED that this matter is REMANDED to the Superior Court for an evidentiary hearing and further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁶ *Stanford v. State*, 2008 WL 2780557 (Del. Supr.) (citing *Roe v. Flores-Ortega*, 528 U.S. 470, 485 (2000)).

⁷ *Id.*