

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE A. COLON,	§	
	§	No. 172, 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. 0501004460
Appellee.	§	

Submitted: August 9, 2008
Decided: November 13, 2008

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

ORDER

This 13th day of November 2008, upon consideration of the briefs of the parties¹ and the Superior Court record, it appears to the Court that:

(1) The appellant, Jose A. Colon, filed this appeal on April 2, 2008 from the Superior Court’s March 7, 2008 summary denial of his motion for reargument. Colon’s motion for reargument, which was filed on February 14, 2008, sought to reargue the Superior Court’s February 6, 2008 denial of Colon’s motion for postconviction relief. In his opening brief on appeal, Colon attempts to argue the merit of his postconviction motion.

¹ The Court has also considered appellant’s “motion to supplement” filed on July 17, 2008.

(2) The Superior Court procedural rules provide that a motion for reargument must be served and filed within five days² of the filing of the order that is sought to be reargued.³ The Superior Court has no authority to extend the time in which to move for reargument.⁴

(3) The Court concludes that the Superior Court's March 7, 2008 summary denial of Colon's motion for reargument was not an abuse of discretion. Colon's motion for reargument, filed six days after the filing of the order sought to be reargued, was untimely.

(4) This Court is without jurisdiction to consider Colon's arguments addressing the merit of his postconviction motion. Colon's untimely motion for reargument did not toll the time to appeal the denial of his postconviction motion.⁵ Any appeal of the February 6, 2008 denial of postconviction relief had to be filed in this Court no later than March 7, 2008.⁶ Because Colon did not file his notice of appeal until April 2, 2008, his appeal was untimely.

² See Del. Super. Ct. Civ. R. 6(a); Del. Super. Ct. Crim. R. 45(a) (excluding intermediate Saturdays, Sundays and legal holidays in computation).

³ Del. Super. Ct. Civ. R. 59(e); see also Super. Ct. Crim. R. 57(d) (providing for the application of the Superior Court Civil Rules).

⁴ Del. Super. Ct. Civ. R. 6(b).

⁵ *Dickens v. State*, 2004 WL 1535814 (Del. Supr.) (citing *Linda D.P. v. Robert J.P.*, 493 A.2d 968 (Del. 1985)).

⁶ See Del. Supr. Ct. R. 6(a)(ii) (providing that an appeal from the denial of postconviction relief must be filed within thirty days). *Duffy v. State*, 1998 WL 138945 (Del. Supr.) (citing *Carr v. State*, 554 A.2d 778, 779 (Del. 1989)).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice