

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FENEL D. BAINE,	§	
	§	No. 529, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County.
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0512011466
Appellee.	§	

Submitted: November 3, 2008  
Decided: December 22, 2008

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 22<sup>nd</sup> day of December 2008, it appears to the Court that:

(1) On October 21, 2008, the Court received Fenel D. Baine’s untimely notice of appeal from the Superior Court’s denial of postconviction relief docketed on September 17, 2008. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before October 17, 2008.<sup>1</sup>

(2) On October 21, 2008, the Clerk issued a notice directing that Baine show cause why the appeal should not be dismissed as untimely filed.<sup>2</sup> In his

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<sup>1</sup> Del. Supr. Ct. R. 6(a)(iii).

<sup>2</sup> Del. Supr. Ct. R. 29(b).

response to the notice to show cause, Baine asserts that a prison guard was responsible for the delay in filing the appeal.

(3) This Court has previously considered and refused to create a separate “mailbox rule” for prisoners.<sup>3</sup> Under Delaware law, a notice of appeal must be received by the Office of the Clerk within the applicable time period to be effective.<sup>4</sup> Unless an appellant can demonstrate that the failure to timely file a notice of appeal is attributable to court-related personnel, an untimely appeal cannot be considered.<sup>5</sup>

(4) Baine does not contend, and the record does not reflect, that his failure to timely file the notice of appeal is attributable to court-related personnel.<sup>6</sup> This case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>3</sup> *Carr v. State*, 554 A.2d 778 (Del. 1989).

<sup>4</sup> *See id.* at 779 (stating that “[t]ime is a jurisdictional requirement”); Del. Supr. Ct. R. 10(a).

<sup>5</sup> *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

<sup>6</sup> *See Brown v. State*, 2004 WL 1535757 (Del. Supr.) (dismissing untimely appeal after concluding that prison law library personnel are not court-related personnel); *Deputy v. Roy*, 2004 WL 1535479 (Del. Supr.) (dismissing untimely appeal after concluding that delay in prison mail system cannot enlarge jurisdictional appeal period.).