

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ABDULLAH G. HUBBARD,	§
	§ No. 60, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 9412010363
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 11, 2010
Decided: June 21, 2010

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

ORDER

This 21st day of June 2010, it appears to the Court that:

(1) The defendant-appellant, Abdullah G. Hubbard, filed an appeal from the Superior Court’s denial of his motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a) and his subsequent motion for reargument. The plaintiff-appellee, the State of Delaware, has moved to dismiss Hubbard’s appeal as untimely.¹ We agree and, accordingly, grant the State’s motion to dismiss.

(2) On December 2, 2009, Hubbard filed a motion for correction of an illegal sentence in connection with sentences he received while on probation in

¹ Supr. Ct. R. 30(d).

1999. The Superior Court denied the motion by order docketed on December 14, 2009 on the ground that a reduction of the sentence was not warranted. On December 29, 2009, Hubbard filed a “motion for review” of the order, requesting that the Superior Court explicitly address his argument that his sentence was illegal pursuant to Rule 35(a). Essentially, Hubbard sought reargument of the Superior Court’s order.² The Superior Court denied the motion for reargument by order docketed on January 7, 2010.³

(3) The record reflects that Hubbard’s motion for reargument, which was filed on December 29, 2009, was untimely, since it was filed more than 5 days after the filing of the Superior Court’s December 14, 2009 order.⁴ Because Hubbard’s motion for reargument was untimely, the Superior Court did not have jurisdiction to consider it.⁵ Moreover, Hubbard’s untimely motion did not toll the time within which to appeal the Superior Court’s December 14, 2009 order.⁶ As such, to the extent that Hubbard seeks to appeal the Superior Court’s December 14, 2009 order, his appeal is untimely and, therefore, must be dismissed.⁷

² Super. Ct. Civ. R. 59(e); Super. Ct. Crim. R. 57(d).

³ In his notice of appeal, Hubbard incorrectly states that his appeal is from an order of the Superior Court dated January 11, 2010.

⁴ Super. Ct. Civ. R. 59(e).

⁵ *Preform Bldg. Components, Inc. v. Edwards*, 280 A.2d 697, 698 (Del. 1971).

⁶ Id.; Supr. Ct. R. 6(a)(iii).

⁷ Hubbard filed his appeal on February 9, 2010, well past the due date of January 13, 2010. Supr. Ct. R. 29(b).

(4) Hubbard's appeal from the Superior Court's January 7, 2010 order also is untimely. While Hubbard claims that the date of the Superior Court's order denying his motion for reargument should be deemed to be January 11, 2010, the record reflects otherwise.⁸ Hubbard did not file his appeal from the order of the Superior Court that was docketed on January 7, 2010 until February 9, 2010---one day beyond the due date for the appeal.⁹ As such, Hubbard's appeal from that order also must be dismissed as untimely.¹⁰

NOW, THEREFORE, IT IS ORDERED that the State's motion to dismiss the appeal is GRANTED.¹¹

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁸ Hubbard's argument that the due date for his appeal should be calculated from the date of mailing of the Superior Court's order is unavailing. *Carr v. State*, 554 A.2d 778, 779 (Del. 1989); *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

⁹ Supr. Ct. R. 6(a)(iii).

¹⁰ Supr. Ct. R. 29(b).

¹¹ The State's motion to affirm is moot.