

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERRICK SMITH,	§
	§
Defendant Below,	§ No. 181, 2021
Appellant,	§
	§ Court Below: Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. I.D. No. 1101020846 (N)
	§
Plaintiff Below,	§
Appellee.	§
	§

Submitted: June 16, 2021

Decided: June 30, 2021

Before **SEITZ**, Chief Justice; **VALIHURA** and **MONTGOMERY-REEVES**, Justices.

ORDER

After consideration of the notice to show cause and the appellant’s response, it appears to the Court that:

(1) On June 4, 2021, the appellant, Derrick Smith, filed a notice of appeal from a Superior Court order that denied Smith’s motion for correction of illegal sentence. The Superior Court order was dated and docketed on April 9, 2021. Under Supreme Court Rules 6 and 11, a timely notice of appeal should have been filed on or before May 10, 2021.

(2) A notice of appeal must be timely filed to invoke the Court's appellate jurisdiction.¹ The jurisdictional defect created by the untimely filing of a notice of appeal cannot be excused unless the appellant can demonstrate that the delay in filing is attributable to court-related personnel.²

(3) On June 9, 2021, the Senior Court Clerk issued a notice directing Smith to show cause why this appeal should not be dismissed as untimely filed. In response to the notice to show cause, Smith states that he twice mailed the notice of appeal to incorrect addresses before realizing his mistake and mailing it to the correct address.

(4) Smith's response to the notice to show cause does not provide a basis for excusing the untimely filing of the notice of appeal. A notice of appeal must be received by the Court within the applicable time period to be effective.³ Delaware has not adopted a rule similar to the federal prison mailbox rule, which deems a notice of appeal as filed at the time it is delivered to prison authorities for mailing.⁴ Because the record does not reflect that Smith's failure to file a timely notice of appeal is attributable to court-related personnel, the appeal must be dismissed.

¹ *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

² *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

³ DEL. SUPR. CT. R. 10(a).

⁴ *Schafferman v. State*, 2016 WL 5929953 (Del. Oct. 11, 2016).

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

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice