

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAWRENCE P. WHALEN,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

No. 346, 2000

Court Below: Superior Court of
the State of Delaware in and for
Sussex County

Cr. A. Nos. S9905-0001 through
-0005

Submitted: August 14, 2000

Decided: August 30, 2000

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

ORDER

This 30th day of August 2000, it appears to the Court that:

(1) On July 18, 2000, the Court received the appellant's notice of appeal from a June 16, 2000, Order of Superior Court, which modified a May 7, 1999 Order. Pursuant to Supreme Court Rule 6, a timely notice of appeal from a June 16, 2000, order should have been filed on or before July 17, 2000.

(2) On July 18, 2000, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing the appellant to show cause why the appeal from the June 16, 2000, order should not be dismissed as untimely filed. The appellant filed his response to the notice to show cause on August 3, 2000. Appellant

contends in his response that he placed his Notice of Appeal in the Sussex Correctional mail on July 13, 2000, that there has been a change in the pick-up schedule of which he had been unaware, and that he is at a disadvantage because he is a *pro se* litigant. He also states that because he is indigent, he could not afford to send the appeal by certified mail, which would have been picked up the same day. Appellant further contends that he was waiting to hear from the Superior Court on a motion for reargument, which was never docketed, and from the attorney who was reviewing the case.

(3) On August 24, 2000, at the Court's request, the appellee filed the State's Response to Appellant's Response to Notice to Show Cause. In response to appellant's argument that he should not be held responsible for the deficiencies in the prison mail system, the State responds that this Court has previously considered and refused to create a separate "mailbox rule" for prisoners. *Duffy v. State*, Del. Supr., No. 498, 1997, Walsh, J. (March 4, 1998) (ORDER). In response to appellant's argument that his indigent status precluded him from sending the notice of appeal by certified mail, the State responds that this is merely another attempt to undermine the long-standing position of this Court against adopting a separate prison mailbox rule. In response to appellant's contention regarding the motion for reargument, the State responds that

appellant's motion for reargument, even if appropriate in these circumstances, was untimely. Regarding appellant's attempt to place the responsibility for the delay in filing his notice of appeal on the attorney to whom he sent his files, the State contends that appellant has successfully filed *pro se* appeals in the past and that, given his familiarity with the criminal justice system, appellant cannot expect to be relieved of his own mistake in waiting too long to file his notice of appeal in this Court.

(4) Time is a jurisdictional requirement. *Carr v. State*, Del. Supr., 554 A.2d 778, 779, *cert. denied*, 493 U.S. 829 (1989). A notice of appeal *must be received* by the Office of the Clerk of this Court within the applicable time period in order to be effective. Supr. Ct. R. 10(a). An appellant's *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6. *Carr v. State*, 554 A.2d at 779. Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered *Bey v. State*, Del. Supr., 402 A.2d 362, 363 (1979).

(5) There is nothing in the record that reflects that appellant's failure to file a timely notice of appeal in this case is attributable to court-related personnel. Consequently, this case does not fall within the exception to the

general rule that mandates the timely filing of a notice of appeal. Thus, the Court concludes that the within appeal must be dismissed.

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

BY THE COURT:

/s/Randy J. Holland
Justice