

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

John E. Babiarz, Jr.  
Judge

Daniel L. Herrmann Courthouse  
Wilmington, Delaware 19801

September 25, 2001

Kevin C. Brathwaite  
Delaware Correctional Center  
P.O. Box 500  
Smyrna, DE 19977

Gregory E. Smith, Esq.  
Deputy Attorney General  
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Wilmington, DE 19805

**RE: *Kevin C. Brathwaite v. Robert Snyder, et al.***  
**C.A. No. 00A-11-007-JEB**  
***Submitted: July 12, 2001***  
***Decided: September 25, 2001***

Dear Mr. Brathwaite and Counsel:

This case began with Plaintiff Brathwaite's complaint in Justice of the Peace Court ("JP Court") seeking the return of his personal property from Defendants, who are officials at the Delaware Correctional Center where Plaintiff is incarcerated. The magistrate granted Defendants' motion to dismiss on June 19, 2000, and Plaintiff appealed to the Court of Common Pleas ("CCP") on August 7, 2000. CCP dismissed his appeal for lack of jurisdiction, pursuant to 10 *Del. C.* § 9571.

Plaintiff appeals from CCP's dismissal and adds several new facts and arguments.<sup>1</sup> The only issue before this Court is whether CCP erred in dismissing the appeal. This is a question of law, which this Court reviews *de novo* on appeal from a CCP decision.<sup>2</sup>

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<sup>1</sup>Although Plaintiff initially asserted that he "was given the wrong instructions regarding the appeal" (Motion for Late Filing in CCP at 1, ¶3), he now argues that Defendants intentionally withheld his mail in order to prevent him from timely filing an appeal. He also adds new facts, including the assertion that one of the items taken from him was a ring valued at \$2500, thus raising the total value of the property from \$501.09 to \$3085.70.

<sup>2</sup>*Wilson v. Sico*, Del. Supr., 713 A.2d 923, 924 (1998).

The appellate jurisdiction of the Court of Common Pleas is defined by statute. An appeal from JP Court to CCP must be filed and perfected within 15 days of the final order from CCP, pursuant to 10 *Del. C.* § 9571(b).<sup>3</sup> This statute is jurisdictional and, if it is not complied with, the appellate court has no jurisdiction over the appeal.<sup>4</sup> In this case, the action was dismissed by JP Court on June 19, 2000, and Plaintiff did not file his appeal in CCP until August 7, 2000, far exceeding the 15-day limit. CCP had no authority to enlarge the 15-day filing period and appropriately dismissed the appeal for lack of jurisdiction. The decision of the Court of Common Pleas is hereby **Affirmed**.

**It Is So ORDERED.**

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Judge John E. Babiarz, Jr.

JEB,jr/RMP/BJW  
Original to Prothonotary

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<sup>3</sup>Title 10 *Del. C.* § 9571(b) provides that “[t]he appeal shall be taken within 15 days of the final order, ruling, decision or judgment.”

<sup>4</sup>*Dzedzej v. Prusinski*, Del. Super., 259 A.2d 384, 386 (1969)(citing *Williams v. Singleton*, Del. Supr., 160 A.2d 376 (1960).