

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JERRY SMITH,	§	
	§	No. 386, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0601020255
Appellee.	§	

Submitted: September 12, 2008

Decided: September 24, 2008

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

**ORDER**

This 24<sup>th</sup> day of September 2008, upon consideration of the notice to show cause and the appellant's response to the notice, it appears to the Court that:

(1) The appellant, Jerry Smith, filed a notice of appeal on August 1, 2008 referencing his Superior Court criminal case *State v. Smith*, Cr. ID No. 0601020255. Smith's appeal papers did not identify the order from which he was appealing. Upon inspection of the Superior Court docket in Smith's case, it appeared that the most recent appealable order issued on June 29, 2007, when the Superior Court denied Smith's motion for postconviction relief.

(2) By letter dated August 5, 2008, the Chief Deputy Clerk advised Smith that he was required to file an amended notice of appeal identifying the date of the order from which he was appealing. The Chief Deputy Clerk further advised Smith that if he intended to appeal the June 29, 2007 denial of postconviction relief, a notice to show cause would issue for his failure to timely file the appeal within thirty days of the order.<sup>1</sup>

(3) Smith did not respond to the Chief Deputy Clerk's letter. On September 4, 2008, the Clerk issued a notice directing Smith to show cause why the appeal should not be dismissed as untimely.

(4) Smith filed a response to the notice to show cause. In his response, Smith confirmed that his August 1, 2008 notice of appeal was from the Superior Court's June 29, 2007 denial of postconviction relief.<sup>2</sup> Smith contended, however, that he filed his "first notice of appeal" from that order on July 10, 2007.<sup>3</sup> In support of that contention, Smith attached a copy of an opening brief dated August 16, 2007.<sup>4</sup>

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<sup>1</sup> An appeal must be filed within thirty days of the order from which the appeal is taken. Del. Supr. Ct. R. 6(a).

<sup>2</sup> The decision, dated June 21, 2007, was docketed on June 29, 2007.

<sup>3</sup> Smith explained that he did not have a copy of his "2007 notice of appeal" because "most of [his] 'legal materials' [were] misplaced during transfer from general population to MSU."

<sup>4</sup> The opening brief attached to Smith's response does not bear a Supreme Court case number.

(5) “Time is a jurisdictional requirement.”<sup>5</sup> The record does not support Smith’s contention that he filed a notice of appeal within thirty days of the Superior Court’s decision of June 29, 2007. The Court does not have jurisdiction to entertain Smith’s appeal.

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>5</sup> *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).