

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL A. HARRIS,	§	
	§	No. 507, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County.
	§	
STATE OF DELAWARE,	§	
	§	C.A. No. 08M-08-085
Plaintiff Below,	§	Cr. ID No. 9611003491
Appellee.	§	

Submitted: November 12, 2008

Decided: December 16, 2008

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

ORDER

This 16th day of December 2008, it appears to the Court that:

(1) On October 2, 2008, the Court received Michael A. Harris' untimely notice of appeal from the Superior Court's order of August 28, 2008 that denied Harris' petition for a writ of habeas corpus. Pursuant to Supreme Court Rule 6, Harris' appeal from the August 28 order had to be filed on or before September 29, 2008.¹

¹ See Del. Supr. Ct. R. 6(a) (providing for thirty-day appeal period).

(2) On October 2, 2008, the Clerk issued a notice directing that Harris show cause why the appeal should not be dismissed as untimely filed.² In his response to the notice, Harris asserted three reasons why his delay in filing the appeal should be excused: (a) he did not receive the August 28, 2008 order until September 18, 2008; (b) he received inadequate assistance from a prison paralegal; and (c) he mailed the notice of appeal on September 26, 2008, three days before the September 29, 2008 filing deadline.

(3) The State has filed an answer opposing Harris' response to the notice to show cause, and Harris has filed a reply to the State's answer. Having carefully considered the positions of the parties, the Court has concluded that Harris' appeal must be dismissed.

(4) “[T]he appellate jurisdiction of this Court rests wholly upon the perfecting of an appeal within the period of limitations fixed by law.”³ Under Delaware law, a notice of appeal must be received by the Office of the Clerk within the applicable time period to be effective.⁴ Unless an appellant can demonstrate that the failure to timely file a notice of appeal is attributable to court-related personnel, an untimely appeal cannot be considered.⁵

² Del. Supr. Ct. R. 29(b).

³ *Riggs v. Riggs*, 539 A.2d 163 (Del. 1988) (quoting *Fisher v. Biggs*, 284 A.2d 117, 118 (Del. 1971)).

⁴ *Carr v. State*, 554 A.2d 778 (Del. 1989); Del. Supr. Ct. R. 10(a).

⁵ *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

(5) The failure to file a timely notice of appeal in this case was not attributable to court-related personnel. Any delay caused by the prison mail system or attributable to prison staff cannot justify an enlargement of the thirty-day appeal period.⁶ Moreover, Harris had eleven days from the date he received the Superior Court order for filing his notice of appeal. He did not do so. When he had ample time within which to mail a timely notice of appeal, Harris' failure to do so cannot be excused.⁷

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁶ See *Brown v. State*, 2004 WL 1535757 (Del. Supr.) (dismissing untimely appeal after concluding that prison law library personnel are not court-related personnel); *Deputy v. Roy*, 2004 WL 1535479 (Del. Supr.) (dismissing untimely appeal after concluding that delay in prison mail system cannot enlarge jurisdictional appeal period.)

⁷ *Hitchens v. State*, 1991 WL 235426 (Del. Supr.).