

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |   |                                 |
|--------------------|---|---------------------------------|
| ALAN T. BROOKS,    | § |                                 |
|                    | § | Nos. 106 and 236, 2008          |
| Defendant Below,   | § | C O N S O L I D A T E D         |
| Appellant,         | § |                                 |
|                    | § | Court Below—Superior Court      |
| v.                 | § | of the State of Delaware in and |
|                    | § | for New Castle County           |
| STATE OF DELAWARE, | § |                                 |
|                    | § |                                 |
| Plaintiff Below,   | § | Cr. ID No. 86002026DI           |
| Appellee.          | § |                                 |

Submitted: October 8, 2008  
Decided: December 18, 2008

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

**ORDER**

This 18<sup>th</sup> day of December 2008, upon consideration of the appellant’s opening brief and the State’s motion to affirm in this consolidated appeal, it appears to the Court that:

(1) In 1987, a Superior Court jury convicted the appellant, Alan T. Brooks, of first degree murder, possession of a deadly weapon during the commission of a felony, attempted first degree robbery, first degree robbery, second degree kidnapping and two counts of second degree conspiracy. On direct appeal, Brooks’ convictions were affirmed.

(2) Brooks moved for postconviction relief in 1993. Brooks’ postconviction motion was denied, and that decision was affirmed on

appeal.<sup>1</sup> Brooks moved again for postconviction relief in 2001. Brooks' second motion was denied, and that decision was affirmed on appeal.<sup>2</sup>

(3) In September 2007, Brooks filed a third motion for postconviction relief. The Superior Court summarily denied the motion in a decision dated October 23, 2007 and docketed by the Prothonotary on October 24, 2007.<sup>3</sup> Thereafter, Brooks, by motion filed on November 1, 2007, Brooks sought to reargue the October 23 denial of postconviction relief. By order dated February 12, 2008, the Superior Court denied the motion for reargument. In an order issued the following day, February 13, 2008, the Superior Court denied Brooks' request for transcript. Brooks' appeal No. 106, 2008, which was filed on February 25, 2008, is from the Superior Court's orders of February 12 and 13, 2008.

(4) In November 2007, Brooks filed a petition for a writ of mandamus seeking to compel his transfer from Pennsylvania to Delaware.<sup>4</sup> The Superior Court denied Brooks' petition by order dated March 18, 2008 and docketed on March 19, 2008. Brooks filed a motion for reargument on April 10, 2008. By order dated April 30, 2008, the Superior Court denied

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<sup>1</sup> *Brooks v. State*, 1994 WL 10882 (Del. Supr.).

<sup>2</sup> *Brooks v. State*, 2001 WL 1560687 (Del. Supr.).

<sup>3</sup> *State v. Brooks*, 2007 WL 3105883 (Del. Super. Ct.).

<sup>4</sup> Brooks is incarcerated in Pennsylvania under the Interstate Corrections Compact.

the motion. Brooks' appeal No. 236, 2008, which was filed on May 12, 2008, is from the April 30 order.

(5) By motion filed on May 14, 2008, Brooks requested an extension of 120 days to file his opening brief. Brooks also requested that the Court consolidate appeal No. 106, 2008 and appeal No. 236, 2008 on the basis that the appeals were "intertwine[d]." By Order dated May 16, 2008, the Court granted Brooks' request for an extension of time and to consolidate the appeals.

(6) As to both appeals, the State contends that the judgments should be affirmed on the basis that the Superior Court had no jurisdiction to consider Brooks' untimely motions for reargument. As to both appeals, the State's position is well-taken.

(7) The Superior Court procedural rules provide that a motion for reargument must be served and filed within five days<sup>5</sup> of the filing of the order that is sought to be reargued.<sup>6</sup> It is well-settled that the Superior Court has no jurisdiction to consider an untimely motion for reargument.<sup>7</sup>

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<sup>5</sup> See Del. Super. Ct. Crim. R. 45(a) (excluding Saturdays, Sundays and legal holidays).

<sup>6</sup> Del. Super. Ct. Civ. R. 59(e); Del. Super. Ct. Crim. R. 57(d).

<sup>7</sup> Cf. *Boyer v. State*, 2007 WL 452300 (Del. Supr.) (concluding that Superior Court had no jurisdiction to consider substance of untimely motion for reargument).

Moreover, an untimely motion for reargument does not toll the time for filing a notice of appeal.<sup>8</sup>

(8) In No. 106, 2008, Brooks' motion for reargument had to be served and filed on or before October 31, 2007, *i.e.*, within five days of the October 24, 2007 docketing of the Superior Court's October 23 order. Brooks' motion for reargument was not filed until November 1, 2007, and therefore was untimely. Moreover, Brooks' untimely motion for reargument did not toll the time in which had to appeal the Superior Court's October 23 order. As a result, any appeal of the October 23 decision had to be filed in this Court no later than November 26, 2007.<sup>9</sup> Brooks' appeal was not filed until February 25, 2008.

(9) In appeal No. 236, 2008, Brooks' motion for reargument had to be served and filed on or before March 26, 2008, *i.e.*, within five days of the March 19, 2008 docketing of the Superior Court's March 18, 2008 order denying mandamus relief. The motion for reargument was not filed until April 10, 2008, and was therefore untimely. Moreover, the untimely motion for reargument did not toll the time to file an appeal from the March 18,

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<sup>8</sup> *McDaniel v. DaimlerChrysler Corp.*, 860 A.2d 321, 323 (Del. 2004) (concluding that only timely motion for reargument will delay finality of judgment (citing to *Preform Bldg. Components, Inc. v. Edwards*, 280 A.2d 697, 698 (Del. 1971) (holding that timely motion for reargument tolls appeal period, but untimely motion does not)).

<sup>9</sup> See Del. Supr. Ct. R. 6(a) (providing for thirty-day appeal period).

2008 denial of Brooks' mandamus petition. Brooks' appeal was not filed until May 12, 2008.

(10) Although we do not have jurisdiction to consider Brooks' untimely appeals of the Superior Court's orders denying postconviction and mandamus relief, we do have jurisdiction to consider Brooks' appeals from the Superior Court's orders denying reargument. We conclude as to both, however, that the Superior Court correctly denied the motions for reargument, albeit for the wrong reasons. While denying the motions on substantive grounds, the Superior Court, in fact, was without jurisdiction to consider the untimely motions. Nonetheless, we conclude that the motions for reargument were properly denied, although for reasons different than those relied upon by the Superior Court.<sup>10</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED that the motion to affirm is GRANTED. The judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland

Justice

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<sup>10</sup> See *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (affirming a judgment of the Superior Court on grounds different from those relied upon by the Superior Court).