

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GLENN ROGER MUMFORD,	§
	§ No. 236, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0701006572
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 1, 2009

Decided: June 8, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 8th day of June 2009, it appears to the Court that:

(1) On February 13, 2009, the defendant-appellant, Glenn Roger Mumford, was found to have committed a violation of probation (“VOP”) in connection with his sentences for two 2007 criminal convictions. On March 17, 2009, Mumford was sentenced for the VOP. Any appeal from his VOP sentence should have been filed on or before April 16, 2009.¹ However, Mumford did not file his pro se appeal in this Court until April 28, 2009.²

¹ Supr. Ct. R. 6(a) (ii).

² The record reflects that Mumford initially filed his appeal in the Superior Court, which also was untimely.

(2) On April 29, 2009, the Clerk issued a notice to Mumford to show cause why his appeal should not be dismissed as untimely filed. Mumford filed a response to the notice to show cause on May 13, 2009. In the response, he states that he was transferred from the prison to Beebe Hospital because of chest pains and, as a result, filed his appeal late and in the wrong court. Although Mumford does not mention it in his response, the Superior Court docket reflects that he was represented by counsel at his February 13, 2009 VOP hearing. The docket also reflects that there is no transcription of that hearing.

(3) We have concluded that, under these circumstances, this matter should be remanded to the Superior Court for a determination of whether Mumford instructed his attorney to file an appeal.³ If the Superior Court determines that Mumford instructed his attorney to file an appeal, then its March 17, 2009 VOP sentencing order should be vacated and Mumford re-sentenced, with the assistance of counsel, so that a timely appeal may be filed.⁴

³ *Roe v. Flores-Ortega*, 528 U.S. 470, 485 (2000).

⁴ *Id.* at 478.

NOW, THEREFORE, IT IS ORDERED that this matter is hereby REMANDED to the Superior Court for further proceedings in accordance herewith. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs
Justice