

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH R. KING,	§	
	§	No. 127, 2013
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0202010963
Appellee.	§	

Submitted: June 1, 2013
Decided: July 16, 2013

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

O R D E R

This 16th day of July 2013, upon consideration of the motion to dismiss filed by the appellee, State of Delaware, and the answer to the motion filed by the appellant, Joseph R. King, it appears to the Court that:

(1) The appellant, Joseph R. King, is an inmate incarcerated at the Howard R. Young Correctional Institution (“HRYCI”). On September 4, 2002, King pled guilty to several criminal offenses, including Robbery in the First Degree. On the robbery count, the Superior Court sentenced King to twenty years at Level V under title 11, section 4214(a) of the Delaware Code and on the remaining counts to a total of eleven years suspended after

successful completion of a prison program, for reduced levels of supervision.

(2) On February 13, 2013, King submitted a letter to the Superior Court. In the letter, which he characterized as a “motion for review of sentence and/or alternatively request for a certified question of law,” King asked the Superior Court to intervene on his behalf and in support of HRYCI’s request to the Department of Correction to apply for a sentence modification under title 11, section 4217 of the Delaware Code.¹ According to King, the Department of Correction had wrongfully denied HRYCI’s request.

(3) By letter dated February 20, 2013, the Superior Court declined King’s request for assistance, advising him that the court “does not have jurisdiction to become involved in the 11 Del. C. § 4217 process.” This appeal followed.

(4) On appeal, the State has filed a motion to dismiss for lack of jurisdiction, arguing that “there was no matter pending before the Superior Court from which King could appeal.” In his answer opposing dismissal of

¹ See Del. Code Ann. tit. 11, § 4217 (Supp. 2013) (providing in pertinent part that the Department of Correction may, in certain circumstances and for good cause shown, apply to the Superior Court for a modification of an offender’s sentence).

the appeal, King contends that his “request for a certified question of law . . . is in fact still pending.”

(5) Whether he means in this Court or in the Superior Court, King is mistaken that his request for a certified question of law is “pending.” Under Supreme Court Rule 41, this Court accepts certification of a question of law only from certain state and federal courts (including the Superior Court), not from an individual party.²

(6) A party’s motion seeking certification of a question of law from the Superior Court must be filed in a pending case before that court.³ In this case, because King’s February 13, 2013 letter was not filed in a pending case before the Superior Court, to the extent King intended the letter to serve as a motion seeking a certification of a question of law from the Superior Court, the letter was of no effect.⁴

(7) Having carefully considered the parties’ positions, the Court has determined that the State’s motion to dismiss should be granted. Under the Delaware Constitution, our appellate jurisdiction in criminal cases is

² Del. Supr. Ct. R. 41(a), (b). See *Brooks-McCollum v. Shareef*, 2004 WL 2239713 (Del. Sept. 30, 2004) (striking party’s application for certification of question of law as a nonconforming document).

³ Del. Supr. Ct. R. 41(a).

⁴ See *Mahan v. Dept. of Correction*, 2012 WL 3100554 (Del. July 30, 2012) (affirming Superior Court’s summary dismissal of defendant’s petition for certification of question of law for lack of jurisdiction when petition was not presented in a case before the court).

limited to appeals from final judgments.⁵ Here, in the absence of a pending cause of action in the Superior Court, the court's February 20, 2013 letter responding to King's February 13, 2013 letter was not a final judgment for purposes of appeal.⁶

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that State's motion to dismiss is GRANTED, and this appeal is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁵ Del. Const., art. IV, § 11(1)(b).

⁶ See *Shoemaker v. Superior Court*, 2004 WL 300964 (Del. Feb. 13, 2004) (dismissing appeal from Superior Court letter informing defendant that the court had no jurisdiction to consider his request for appointment of counsel because defendant had no cause of action pending in the Superior Court).