

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE FERNANDINI,	§
	§
Defendant Below-	§ No. 564, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0509005024
Plaintiff Below-	§
Appellee.	§

Submitted: November 30, 2009

Decided: December 7, 2009

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

**ORDER**

This 7<sup>th</sup> day of December 2009, it appears to the Court that:

(1) On September 28, 2009, the Court received appellant's notice of appeal from a Superior Court order, dated August 26, 2009, which sentenced appellant on a probation violation. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before September 25, 2009.

(2) The Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing appellant's counsel to show cause why the appeal should not

be dismissed as untimely filed.<sup>1</sup> Counsel filed a response to the notice to show cause on November 17, 2009, stating that counsel was not aware of appellant's desire to appeal.

(3) The State replied to both appellant and defense counsel's responses. The State recommends that, under these circumstances, the matter be remanded to the Superior Court to vacate its August 26 sentencing order and to resentence appellant, with the assistance of counsel, so that he may pursue a timely appeal.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's August 26, 2009 sentencing order is hereby VACATED, and the matter is REMANDED for resentencing. Jurisdiction is not retained.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>1</sup>Del. Supr. Ct. R. 6(a)(ii).