

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|------------------------------|
| DON D. CUSTIS, | § |
| | § |
| Defendant Below- | § No. 131, 2012 |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for Sussex County |
| | § Cr. ID 0803000219 |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: July 10, 2012¹
Decided: July 24, 2012

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

ORDER

This 24th day of July 2012, it appears to the Court that:

(1) On March 16, 2012, this Court received appellant Don Custis' notice of appeal from a Superior Court order, docketed February 1, 2012, denying his motion for reconsideration of the Superior Court's previous denial of his motion for sentence modification. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before March 2, 2012.

(2) The Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing Custis to show cause why the appeal should not be dismissed as untimely

¹ The Court held this matter in abeyance pending the outcome of its decision in *Smith v. State*, 2012 WL 2821889, ___ A.3d ___ (Del. 2012), which was issued on July 10, 2012.

filed.² Custis filed a response to the notice to show cause on March 28, 2012. He asserts that he could not file his appeal earlier because he was kept “in the hole” and did not have access to the law library in order to prepare his notice of appeal. He asks that his untimely filing be excused.

(3) Time is a jurisdictional requirement.³ A notice of appeal must be received by the Office of the Clerk of *this* Court within the applicable time period in order to be effective.⁴ This Court recently reaffirmed its holding that an appellant’s pro se status does not excuse a failure to comply strictly with the jurisdictional requirements of 10 Del. C. § 147 and Delaware Supreme Court Rule 6.⁵ Unless an appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered.⁶

(4) There is nothing to reflect that Custis’ failure to timely file his notice of appeal in this case is attributable in any way to court personnel.⁷ Accordingly, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal. Thus, the Court concludes that the within appeal must be dismissed.

²Del. Supr. Ct. R. 6(a)(iii) (2012).

³*Carr v. State*, 554 A.2d 778, 779 (Del.), *cert. denied*, 493 U.S. 829 (1989).

⁴Del. Supr. Ct. R. 10(a) (2012).

⁵*Smith v. State*, 2012 WL 2821889, ___ A.3d ___ (Del. July 10, 2012); *Carr v. State*, 554 A.2d at 779.

⁶*Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

⁷*Zuppo v. State*, 2011 WL 761523 (Del. Mar. 3, 2011) (holding that prison personnel are not court personnel).

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

BY THE COURT:

/s/ Randy J. Holland
Justice