

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ARTHUR BIGGINS,	§	
	§	No. 640, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County.
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9609015504
Appellee.	§	

Submitted: October 18, 2010

Decided: October 19, 2010

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

**ORDER**

This 19<sup>th</sup> day of October 2010, upon consideration of the Clerk's notice to show cause and the appellant's response, it appears to the Court that:

(1) On October 6, 2010, the Court received the appellant's notice of appeal from the Superior Court's order dated August 31, 2010, docketed on September 2, 2010, denying his petition for a writ of certiorari. On its face, the notice of appeal was untimely filed.<sup>1</sup>

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<sup>1</sup> A notice of appeal from the August 31, 2010 order was due to be filed on or before October 4, 2010. *See* Del. Supr. Ct. R. 6(a)(i), (iii) (providing that a notice of appeal is due within thirty days after entry upon the docket of the judgment or order from which the appeal is taken).

(2) On October 7, 2010, the Clerk issued a notice directing that the appellant show cause why the appeal should not be dismissed.<sup>2</sup> In response to the notice, the appellant states that the untimeliness of the notice of appeal should be excused on the basis that “exhibits” attached to the notice of appeal “should have cleared up any concerns.”

(3) The exhibits to which the appellant refers appear to be photocopies of the Superior Court’s envelope enclosing the August 31, 2010 order, received by the appellant on September 4, 2010, and the appellant’s envelope, postmarked October 4, 2010, mailing the notice of appeal to the Clerk. To the extent the appellant suggests that the exhibits demonstrate that he mailed the notice of appeal on or before the deadline for filing the appeal, his response is unavailing.

(4) “Time is a jurisdictional requirement.”<sup>3</sup> Under Delaware law, a notice of appeal must be received by the Office of the Clerk within the applicable time period to be effective.<sup>4</sup> Absent any indication in the record that the appellant’s failure to file a timely notice of appeal is attributable to

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<sup>2</sup> Del. Supr. Ct. R. 29(b).

<sup>3</sup> *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

<sup>4</sup> Del. Supr. Ct. R. 10(a); *Carr v. State*, 554 A.2d at 779.

court-related personnel, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal.<sup>5</sup>

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>5</sup> *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).