

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID M. WATSON,	§	
	§	No. 695, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County.
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0603017504
Plaintiff Below,	§	0603014298
Appellee.	§	

Submitted: November 3, 2010
Decided: November 10, 2010

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

ORDER

This 10th day of November 2010, upon consideration of the Clerk's notice to show cause and the appellant's response, it appears to the Court that:

(1) The appellant, David M. Watson, is incarcerated at the James T. Vaughn Correctional Center. On October 28, 2010, the Court received Watson's notice of appeal from the Superior Court's order dated and docketed September 15, 2010. The September 15, 2010 order denied Watson's fourth motion for postconviction relief.

(2) Watson’s notice of appeal filed on October 28, 2010 from the September 15, 2010 order was untimely on its face.¹ A notice of appeal must be filed within thirty days after entry upon the trial court’s docket of the order sought to be reviewed.²

(3) On October 28, 2010, the Clerk issued a notice directing that Watson show cause why the appeal should not be dismissed.³ Watson filed a response on November 3, 2010. In his response, Watson states that he “was housed in isolation during the 30 day window,” and that his “isolation status denied him any access to his legal work or a law librarian, to commence a notice of appeal.”

(4) “Time is a jurisdictional requirement.”⁴ Under Delaware law, a notice of appeal must be received by the Office of the Clerk within the applicable time period to be effective.⁵ Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel or to unusual circumstances that are not attributable to the appellant, an appeal cannot be considered.⁶

¹ A notice of appeal from the September 15, 2010 order was due to be filed on or before October 18, 2010.

² Del. Supr. Ct. R. 6(a)(iii).

³ Del. Supr. Ct. R. 29(b).

⁴ *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

⁵ Del. Supr. Ct. R. 10(a); *Carr v. State*, 554 A.2d at 779.

⁶ *Riggs v. Riggs*, 539 A.2d 163, 164 (Del. 1988) (citing *Bey v. State*, 402 A.2d 362, 363 (Del. 1979)).

(5) In this case, Watson's explanation is insufficient to excuse the untimely filing of his notice of appeal. Absent any indication that the failure to file a timely notice of appeal is attributable to court-related personnel or to unusual circumstances that are not attributable to Watson, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal.⁷

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁷ *Id. Accord Fisher v. State*, 2009 WL 696399 (Del. Supr.); *Drummond v. State*, 2006 WL 1519357 (Del. Supr.); *Gibison v. State*, 2000 WL 1508617 (Del. Supr.); *Taylor v. State*, 2000 WL 275636 (Del. Supr.); *Winn v. State*, 1997 WL 33100 (Del. Supr.) (dismissing untimely appeal under similar circumstances, *i.e.*, when incarcerated appellant was without access to personal and/or legal documents due to appellant's placement in solitary confinement, isolation or segregation unit).