

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN FOSTER,	§	
	§	No. 702, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0703031898
Appellee.	§	

Submitted: November 16, 2010
Decided: November 24, 2010

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

ORDER

This 24th day of November 2010, upon consideration of the appellant's response to the notice to show cause, it appears to the Court that:

(1) On November 3, 2010, the appellant, John Foster, filed a notice of appeal from a Superior Court Commissioner's September 28, 2010 report recommending that Foster's motion for postconviction relief should be denied. On November 4, 2010, the Clerk issued a notice directing that Foster show cause why the appeal should not be dismissed pursuant to

Supreme Court Rule 29(b) for this Court’s lack of jurisdiction to consider an appeal directly from a commissioner’s report and recommendation.¹

(2) In his response to the notice to show cause, Foster argues the merit of his claims for postconviction relief. He does not, however, address the jurisdictional issue raised in the notice to show cause.

(3) The Court’s appellate jurisdiction is limited to decisions issued by judges of a court.² The Court does not have the authority to hear an appeal directly from a report and recommendation of a Superior Court Commissioner without intermediate review by a Superior Court judge.³

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

¹ *Johnson v. State*, 884 A.2d 475, 479 (Del. 2005).

² *Id.*

³ *Id.* See also *Cleveland v. State*, 2009 WL 1579000 (Del. Supr.) (dismissing appeal from commissioner’s order as an “impermissible interlocutory appeal in a criminal case”); *Wilmer v. State*, 2009 WL 696400 (Del. Supr.) (dismissing appeal from commissioner’s report recommending that appellant’s motion for postconviction relief should be denied).