

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICKY B. HICKMAN,	§
	§ No. 508, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0301005176
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 10, 2010

Decided: December 21, 2010

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

**ORDER**

This 21<sup>st</sup> day of December 2010, it appears to the Court that:

(1) On August 11, 2010, the Court received the appellant's notice of appeal from the Superior Court's order dated and docketed on June 28, 2010, which denied his motion for postconviction relief. Pursuant to Supreme Court Rule 6, a timely notice of appeal from the June 28, 2010 order should have been filed on or before July 28, 2010.<sup>1</sup>

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<sup>1</sup> Although the appellant filed a motion for reargument in the Superior Court on July 14, 2010, the motion was untimely. Super. Ct. Crim. R. 57(d); Super. Ct. Civ. R. 59(e). As such, it did not toll the time for the filing of a timely appeal from the Superior Court's June 28, 2010 order. *Haskins v. State*, Del. Supr., No. 455, 2007, Holland, J. (Mar. 11, 2008).

(2) On December 1, 2010, the Clerk issued a notice pursuant to Rule 29(b) directing the appellant to show cause why the appeal should not be dismissed as untimely filed. The appellant filed his response to the notice to show cause on December 10, 2010. The appellant states that his motion for reargument was mailed in a timely fashion, but was returned to him due to insufficient postage. He requests special consideration because of his *pro se* status.

(3) Pursuant to Rule 6(a)(iii), a notice of appeal in any proceeding for postconviction relief must be filed within 30 days after entry upon the docket of the judgment or order being appealed. Time is a jurisdictional requirement.<sup>2</sup> A notice of appeal must be received by the Office of the Clerk of the Court within the applicable time period in order to be effective.<sup>3</sup> An appellant's *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements of Rule 6.<sup>4</sup> Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal may not be considered.<sup>5</sup>

(4) There is nothing in the record before us reflecting that the appellant's failure to file a timely notice of appeal is attributable to court-

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

<sup>3</sup> Supr. Ct. R. 10(a).

<sup>4</sup> *Carr v. State*, 554 A.2d at 779.

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

related personnel. Consequently, 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.

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

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice