

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARK COURTNEY,	§	
	§	No. 183, 2016
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware
v.	§	
	§	Cr. ID No. 1210007303
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 26, 2016

Decided: June 16, 2016

Before **VALIHURA, VAUGHN** and **SEITZ**, Justices.

O R D E R

This 16th day of June 2016, it appears to the Court that:

(1) On April 11, 2016, the appellant, Mark Courtney, filed a notice of appeal from a Superior Court order dated and docketed December 1, 2015, denying his motion for modification of sentence. On its face, the notice of appeal was untimely filed. Under Supreme Court Rule 6(a)(iv), the appeal was due to be filed on or before December 31, 2015.¹

¹ Del. Supr. Ct. R. 6(a)(iv) (providing that an appeal must be filed within thirty days after entry upon the docket of an order in any proceeding for postconviction relief).

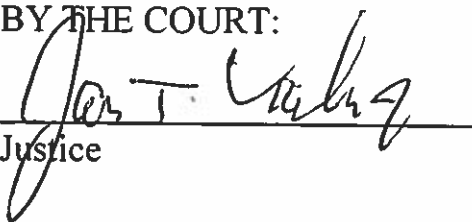
(2) A notice of appeal must be timely filed to invoke the Court's appellate jurisdiction.² The jurisdictional defect created by the untimely filing of a notice of appeal cannot be excused unless the appellant can demonstrate that the delay in filing is attributable to court-related personnel.³

(3) On April 11, 2016, the Clerk issued a notice directing Courtney to show cause why the appeal should not be dismissed as untimely filed. In response to the notice, Courtney explains that he was not aware that he could file an appeal from an order denying a motion for modification of sentence. Courtney states that when he realized that the December 1 order was appealable, he filed the notice of appeal right away.

(4) Courtney does not contend, and the record does not reflect, that his failure to timely file the appeal is attributable to 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.

NOW, THEREFORE, IT IS ORDERED, under Supreme Court Rules 6 and 29(b), that the appeal is DISMISSED.

BY THE COURT:


Justice

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

³ *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).