## IN THE SUPREME COURT OF THE STATE OF DELAWARE

THEODORE HARRIS,

Defendant Below,
Appellant,

V.

STATE OF DELAWARE,

Plaintiff Below,
Appellees.

STATE OF DELAWARE,

Plaintiff Below,
Appellees.

STATE OF DELAWARE,

Plaintiff Below,
STATE OF DELAWARE,
STATE OF DELAWARE

Submitted: November 16, 2018 Decided: November 29, 2018

## **ORDER**

This 29<sup>th</sup> day of November, 2018, it appears to the Court that:

- (1) On October 3, 2018, the appellant, Theodore Harris, filed a notice of appeal from a Superior Court order, dated and docketed on August 27, 2018, that denied his motion for modification of sentence. Because the notice of appeal appeared to be untimely filed, the Senior Court Clerk issued a notice under Supreme Court Rule 29(b) that directed Harris to show cause why the appeal should not be dismissed for his failure to file the notice of appeal within thirty days of the Superior Court's order.
- (2) On October 12, 2018, the Court received a letter from Harris requesting an extension until November 15, 2018 to file an opening brief, based on "serious

problems securing legal assistance and law library appointments." On October 12, 2018, the Senior Court Clerk sent Harris a letter stating that, because no briefing schedule had yet been entered in the case, the Court had deemed Harris's letter to be a request for an extension of time to file a response to the notice to show cause. The Court granted the extension and stated that Harris was required to file any response to the notice to show cause by November 15, 2018. If Harris did not file a response by that date, the notice to show cause would be deemed to be unopposed and the case would be dismissed.

- (3) On October 31, 2018, the Court received a letter from Harris styled as a "motion to stay the proceeding" in this Court. In that letter, Harris stated that, in his motion for sentence modification before the Superior Court, he had neglected to raise an alleged error in the sentence. He had filed in the Superior Court a new "motion for sentence review," and the Superior Court had informed him that it could not entertain any motion while this appeal is pending. Harris therefore requested that this Court either "stay or suspend the present appeal and return the record to the Superior Court so that I can resubmit my motion for sentence review in the proper manner."
- (4) On October 31, 2018, the Senior Court Clerk sent Harris a letter denying Harris's request for a stay and directing Harris either to file a response to

the notice to show cause by November 15, 2018, or to file a voluntary dismissal of

the appeal. Harris has not taken any further action in the appeal.

(5) Because Harris's October 31, 2018 letter does not address the

untimeliness of his appeal and seeks remand to the Superior Court, the Court deems

dismissal of the appeal to be unopposed.

NOW, THEREFORE, IT IS ORDERED, under Supreme Court Rules 29(b)

and 3(b)(2), that the appeal is DISMISSED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.

Justice

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