

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEREMY LOBACCARO,	§	
	§	No. 374, 2020
Defendant Below,	§	
Appellant,	§	
v.	§	Court Below–Superior Court
	§	of the State of Delaware
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1607010739 (K)
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 9, 2020
Decided: December 11, 2020

Before **SEITZ**, Chief Justice; **TRAYNOR** and **MONTGOMERY-REEVES**, Justices.

ORDER

After careful consideration of the notice to show cause and the parties' responses thereto, it appears to the Court that:

(1) On November 5, 2020, the appellant, Jeremy Lobaccaro, filed a notice of appeal from a Superior Court order, dated September 18, 2020, and docketed September 22, 2020, denying his motion for sentence review/modification. Under Supreme Court Rule 6, a timely notice of appeal had to be filed with the Court on or before October 22, 2020. The Senior Court Clerk issued a notice directing the appellant, Jeremy Lobaccaro, to show cause why this appeal should not be dismissed as untimely filed.

(2) In his response to the notice to show cause, Lobaccaro states that he did not learn of the court's order until he spoke with his mother on October 13, 2020, and after he had asked her to call his attorney and inquire about the status of the motion for sentence review. Lobaccaro further attests that he did not receive a physical copy of the order until October 16, 2020. Lobaccaro's counsel states that he does not dispute the time sequence of events advanced by Lobaccaro. According to the State, the Department of Correction has no record of any incoming mail to Lobaccaro between September 22, 2020, and October 16, 2020. In light of the evidence supporting Lobaccaro's claim that he did not receive the September order in a timely manner, the State suggests that this Court remand the matter with directions to the Superior Court to re-issue the September 2020 order so that Lobaccaro has the opportunity to file a timely notice of appeal.

(3) We agree that the proper course of action is to remand this matter to the Superior Court. Upon remand, the Superior Court shall re-issue the September 2020 order.

NOW, THEREOFRE, IT IS ORDERED that the within matter is REMANDED to the Superior Court for further action in accordance with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Tamika R. Montgomery-Reeves
Justice