

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID A. SALASKY,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Appellee.

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§ No. 298, 2022

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§ Court Below—Superior Court
§ of the State of Delaware

§

§ Cr. ID No. 11090124191 (N)

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Submitted: September 27, 2022

Decided: October 4, 2022

Before **SEITZ**, Chief Justice; **VALIHURA** and **VAUGHN**, Justices.

ORDER

After careful consideration of the notice to show cause and the appellant's response, it appears to the Court that:

(1) On August 23, 2022, the appellant, David A. Salasky, filed a notice of appeal from a Superior Court order, dated and docketed on July 7, 2022, denying his motion to withdraw his 2013 guilty but mentally ill plea. A timely notice of appeal should have been filed on or before August 8, 2022.¹ The Chief Deputy Clerk issued

¹ Del. Supr. Ct. R. 6(a)(iv) (providing that notice of appeal from postconviction decision must be filed within thirty days of entry of the order on the docket); Del. Supr. Ct. R. 11(a) (providing that if the last day of the time period prescribed by the Rules falls on the weekend or a holiday then the time period runs until the end of the next day the Clerk's office is open).

a notice directing Salasky to show cause why this appeal should not be dismissed as untimely filed.

(2) In his response to the notice to show cause, Salasky states that he has limited access to the law library at the out-of-state prison where he is incarcerated and that he is unskilled in the law. He also states that his former counsel has not provided his case file to him. In addition to the notice of appeal, Salasky has filed motions to compel his former defense counsel to produce his case file and to vacate his guilty plea in this Court.

(3) Time is a jurisdictional requirement.² A notice of appeal must be received by the Office of the Clerk of this Court within the applicable time period in order to be effective.³ An appellant's *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6.⁴ Unless an appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, an untimely appeal cannot be considered.⁵

(4) Salasky has not shown that his failure to file a timely notice of appeal is attributable to court-related personnel.⁶ Consequently, this case does not fall

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

³ Supr. Ct. R. 10(a).

⁴ *Smith v. State*, 47 A.3d 481, 486-87 (Del. 2012).

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

⁶ See, e.g., *Hester v. State*, 2022 WL 2913357, at *1 (Del. July 22, 2022) (dismissing untimely appeal where the appellant asserted that he was unskilled in the law and the out-of-state prison where he was incarcerated did not have Delaware legal materials); *Parker v. State*, 2021 WL 4495821, at *1 (Del. Sept. 30, 2021) (dismissing untimely appeal where inmate claimed his appeal

within the exception to the general rule that mandates the timely filing of a notice of appeal, and this appeal must be dismissed. Dismissal of this appeal renders Salasky's motions moot.

NOW, THEREFORE, IT IS ORDERED, under Supreme Court Rule 29(b), that this appeal is DISMISSED. The motions are denied as moot.

BY THE COURT:

/s/ Karen L. Valihura
Justice

was late because he lacked education regarding the law and COVID-19 restrictions interfered with his access to the prison law library);