

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MONROE T. LAWS,	§
	§
Defendant Below,	§ No. 117, 2001
Appellant,	§
	§ Court Below – Superior Court of the
v.	§ State of Delaware, in and for New
	§ Castle County in Cr.A.Nos. IN89-
STATE OF DELAWARE,	§ 02-0266-R2 through 0268-R2.
	§
Plaintiff Below,	§
Appellee.	§ Def. ID No. 30900552DI

Submitted: March 29, 2001

Decided: April 27, 2001

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 27th day of April 2001, it appears to the Court that:

(1) On March 15, 2001, the Court received the appellant's untimely *pro se* notice of appeal from the Superior Court's order of January 5, 2001, denying the appellant's second motion for postconviction relief. On March 15, 2001, the Clerk issued a notice directing the appellant to show cause why the appeal should not be dismissed as untimely pursuant to Supreme Court Rules 6 and 29.

(2) In his response dated March 19, 2001, the appellant states that he was represented by two attorneys in the Superior Court, and that neither attorney filed a timely appeal on his behalf, as he had requested. The appellant contends that he should not be penalized for his attorneys' mistake.

(3) It appears from the record that the appellant was represented by privately retained local and out-of-state counsel in the Superior Court. A privately retained counsel does not have a continuing obligation under Supreme Court Rule 26 to represent a defendant on appeal from the denial of postconviction relief.¹

(4) This Court lacks jurisdiction to consider an appeal when the notice of appeal is not filed in a timely manner, unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel.² The jurisdictional defect created by the untimely filing of a notice of appeal cannot be excused "in the absence of

¹ Supr. Ct. R. 26(a)(2); *Murray v. State*, Del. Supr., No. 248, 1990, Walsh, J., 1990 WL 169040 (Oct. 15, 1990) (ORDER); compare *Dixon v. State*, Del. Supr., 581 A.2d 1115 (1990) (continuing duty of representation of trial counsel on direct appeal).

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

unusual circumstances which are not attributable to the appellant or the appellant's attorney."³

(5) The failure to file a timely appeal in this case is not attributable to court-related personnel. Therefore, 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, pursuant to Supreme Court Rules 6 and 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Riggs v. Riggs*, Del. Supr., 539 A.2d 163, 164 (1988).