

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROY L. ALFORD,	§
	§
Defendant Below-	§ No. 304, 2013
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 92K05709DI
Plaintiff Below-	§
Appellee.	§

Submitted: June 19, 2013

Decided: July 8, 2013

Before **HOLLAND, BERGER, and JACOBS**, Justices.

**ORDER**

This 8<sup>th</sup> day of July 2013, it appears to the Court that:

(1) On June 11, 2013, the Court received appellant's notice of appeal from a Superior Court order, dated May 1, 2013, which denied his second motion for postconviction relief. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before May 31, 2013.

(2) The Senior Court Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing appellant to show cause why the appeal should not be dismissed as untimely filed.<sup>1</sup> Appellant filed a response to the notice

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<sup>1</sup>Del. Supr. Ct. R. 6(a)(iii).

to show cause on June 19, 2013. He requests that his appeal not be dismissed based on exigent circumstances. He contends that he suffered a heart attack and had open heart surgery in February 2013 and has been weak and fatigued since that time, which contributed to his inability to file his appeal in a timely manner. He also suggests his untimely filing was due to his inability to receive requested appointments in the prison law library.

(3) We find no merit to these arguments. Time is a jurisdictional requirement.<sup>2</sup> 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.<sup>3</sup> An appellant's incarcerated and/or *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6.<sup>4</sup> Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered.<sup>5</sup>

(4) In this case, there is no evidence that appellant's untimely filing is attributable to court-related personnel. Accordingly, this case does fall within the exception to the general rule that mandates the timely filing of a

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<sup>2</sup>*Carr v. State*, 554 A.2d 778, 779 (Del.), *cert. denied*, 493 U.S. 829 (1989).

<sup>3</sup>Del. Supr. Ct. R. 10(a).

<sup>4</sup>*Carr v. State*, 554 A.2d at 779.

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

notice of appeal. Thus, the Court concludes that the within appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger  
Justice