

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIC WITHERSPOON,	§
	§
Defendant Below-	§ No. 113, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID No. 9610003447
Plaintiff Below-	§
Appellee.	§

Submitted: August 11, 2003
Decided: October 1, 2003

Before **HOLLAND, STEELE** and **JACOBS**, Justices

ORDER

This 1st day of October 2003, it appears to the Court that:

(1) On July 25, 2003, the Clerk of the Court issued a notice to the appellant, Eric Witherspoon, directing him to show cause why this appeal should not be dismissed pursuant to Supreme Court Rule 29(b) for failing to diligently prosecute the appeal by not filing his opening brief and appendix. In Witherspoon's response to the notice to show cause, filed on August 11, 2003, he states that he is incarcerated in Massachusetts, has been denied access to the necessary Delaware legal materials, and needs to have counsel appointed to assist him with the filing of his opening brief and appendix.

(2) Previously, on March 26, 2003, the Court received a letter from Witherspoon stating that he needed counsel to assist him because he did not have access to the necessary Delaware legal materials. On March 28, 2003, the Court granted Witherspoon a 30-day extension for the filing of his opening brief.¹ Witherspoon subsequently filed a motion for the appointment of counsel, which this Court denied. On May 15, 2003, the Clerk's Office sent Witherspoon a brief deficiency notice. Witherspoon again requested that counsel be appointed. On May 21, 2003, the Clerk's Office responded to Witherspoon's request stating that it was his "obligation to raise the issues in your appeal to the best of your abilities." On June 6, 2003, the Clerk's Office received another letter from Witherspoon requesting the appointment of counsel. By letter dated June 6, 2003, the Clerk's Office advised that, if Witherspoon's opening brief were not filed by July 10, 2003, a notice to show cause would issue.

(3) Witherspoon's opening brief and appendix have not been filed as required by Supreme Court Rule 15. Therefore, this Court is unable to conduct a meaningful review. In light of Witherspoon's failure to diligently prosecute his appeal by not filing his opening brief and appendix, the dismissal of this action is warranted pursuant to Supreme Court Rule 29(b).

¹In its Order, the Court stated the following: "It is the appellant's responsibility to prepare an opening brief in this matter. If no brief is prepared the matter will ultimately be dismissed. If the appellant is unable to obtain needed research material such an issue may be raised in the opening brief."

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

BY THE COURT:

/s/ Myron T. Steele
Justice