

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIC AMARO,	§
	§ No. 588, 2000
Defendant Below,	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr.A. No. PN00-02-1198
	§
Plaintiff Below,	§
Appellee.	§

Submitted: February 20, 2001

Decided: March 6, 2001

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

**ORDER**

This 6<sup>th</sup> day of March 2001, it appears to the Court that:

(1) On December 26, 2000, the Court received Eric Amaro's untimely notice of appeal from the Superior Court's sentence of October 27, 2000. The sentence was pronounced following Amaro's plea of guilty to one count of third degree rape. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before November 27, 2000.

(2) The Assistant Clerk of the Court issued a notice pursuant to Supreme Court Rule 29(b) directing Amaro to show cause why the appeal should not be dismissed as untimely filed. In his response, Amaro contends that

he directed his attorney to file an appeal, but his attorney failed to follow those instructions.

(3) Time is a jurisdictional requirement.<sup>1</sup> A notice of appeal *must* be received by the Office of the Clerk of the Supreme Court within the applicable time period in order to be effective.<sup>2</sup> Unless Amaro can demonstrate that his failure to file a timely notice of appeal is attributable to court-related personnel, and is not attributable either to himself or to his lawyer, the appeal cannot be considered.<sup>3</sup>

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<sup>1</sup>*Carr v. State*, Del. Supr., 554 A.2d 778, *cert. denied*, 493 U.S. 829 (1989).

<sup>2</sup>Supr. Ct. R. 10(a).

<sup>3</sup>*Bey v. State*, Del. Supr., 402 A.2d 362, 363 (1979).

(4) There is nothing in the record to reflect that Amaro's failure to file a timely notice of appeal in this case is attributable to court-related personnel. Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal. Amaro's assertion that the failure to file a timely notice of appeal from his guilty plea and sentence is attributable to his counsel is an issue that can be resolved by the Superior Court through the postconviction process.<sup>4</sup> Unfortunately, the Court concludes that the within appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 6 and 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>4</sup>See Super. Ct. Crim. R. 61; *Dixon v. State*, Del. Supr., 581 A.2d 1115 (1990); *Braxton v. State*, Del. Supr., 479 A.2d 831 (1984).