

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PHILLIP DOWNS,

Defendant Below,  
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,  
Appellee.

No. 428, 2001

Court Below: Superior Court  
of the State of Delaware in and  
for Kent County

Cr. A. No. IK98-09-0046RI

Cr. ID No. 9808024142

Submitted: September 26, 2001

Decided: October 15, 2001

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices.

**ORDER**

This 15<sup>th</sup> day of October 2001, upon consideration of the notice of appeal filed by Phillip Downs, the notice to show cause issued by the Clerk, Downs' response to the notice to show cause, and the State's Answer thereto filed September 26, 2001, it appears to the Court that:

(1) On September 4, 2001, the Court received from Phillip Downs a letter dated August 30, 2001, inquiring about two attempts he alleged to have made to appeal the Superior Court's denial of his motion for postconviction relief on July 26, 2001. The Clerk of the Court deemed Mr. Downs' letter

to be a notice of appeal. A timely notice of appeal from a Superior Court order of July 26, 2001, should have been filed on or before August 27, 2001.

(2) On September 4, 2001, the Clerk issued a notice, pursuant to Supreme Court Rule 29(b), directing Downs to show cause why the appeal should not be dismissed for failure to file a timely notice of appeal. Downs filed a response to the notice to show cause on September 17, 2001. In his response, Downs claims that he filed two timely notices of appeal, the first on August 6, 2001, and the second on August 20, 2001. Neither of these notices of appeal were filed in the office of the Clerk of the Supreme Court. Downs states that copies of the appeals were served on the office of the Department of Justice. He does not contend that the notices of appeal were, in fact, filed in the Supreme Court. He requests in his response that the Department of Justice forward copies of the notices of appeal to the Supreme Court.

(3) Upon request of the Court, the appellee, State of Delaware, filed, on September 26, 2001, an Answer to Downs' response. The State confirms that Downs did serve copies of notices of appeal on the Department of Justice

and that those copies were received on August 8<sup>1</sup> and August 22. The State explains that the Department of Justice had no way of knowing that the copies of the notices of appeal served on that office had not been filed in the Clerk's office. Even if employees of the Department of Justice had known the appeal had not been filed with the Clerk, it would not have been their responsibility to inform the Clerk's office of the filing.

(4) 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 *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements.<sup>4</sup> Unless an appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel (and employees of the Department of

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<sup>1</sup> The notice of appeal that was received by the Department of Justice on August 8, 2001, was stated to be an appeal from an order of the Superior Court dated July 19, 2001. An independent review of the Superior Court docket sheet does not reflect any order having been entered on July 19, 2001.

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

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

<sup>4</sup> Supr. Ct. R. 6; *Carr v. State*, 554 A.2d at 779.

Justice are not “court-related personnel”), his appeal cannot be considered.<sup>5</sup>

(5) There is nothing in the record that reflects that Downs’ 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. 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/Joseph T. Walsh  
Justice

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