

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM JOHN EVANS,

Plaintiff Below,
Appellant,

v.

STATE OF DELAWARE and
DEPARTMENT OF
CORRECTION,

Defendants Below,
Appellees.

No. 423, 2001

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

C.A. No. 00C-10-002

Submitted: September 19, 2001

Decided: October 15, 2001

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

ORDER

This 15th day of October 2001, upon consideration of the notice of appeal filed by William John Evans; the notice to show cause issued by the Clerk; and the response by Mr. Evans to the notice to show cause, it appears to the Court that:

(1) On September 4, 2001, the Court received Mr. Evans' notice of appeal from the Superior Court's Order dated July 31, 2001. A timely notice

of appeal from an Order dated July 31, 2001, should have been filed on or before August 30, 2001.

(2) On September 5, 2001, the Clerk issued a notice, pursuant to Supreme Court Rule 29(b), directing Evans to show cause why the appeal should not be dismissed for failure to file a timely notice of appeal. Evans filed a response to the notice to show cause on September 19, 2001. In his response, Evans contends that due to his transfer from Delaware Correctional Center to Central Violation Center, compounded by an order from security staff to get rid of most of his legal material, he was unable to file his notice of appeal sooner than he did. He states that he dropped off his notice of appeal in the institutional mailbox on August 25, 2001.

(3) Evans' contentions are unavailing. This Court has previously considered and refused to create a separate "mailbox rule" for prisoners.¹ Any delay caused by the prison mail system cannot justify an enlargement of the 30-day appeal period.²

¹ *Carr v. State*, Del. Supr., 554 A.2d 778, 779, *cert. denied*, 493 U.S. 829 (1989).

² *Dunham v. State*, Del. Supr., No. 407, 1986, Horsey, J., 1987 WL 36709 (Feb. 24, 1987) (ORDER).

(4) Time is a jurisdictional requirement.³ 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.⁴ An appellant's *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements.⁵ Unless an appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered.⁶

(5) There is nothing in the record that reflects that Evans' 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

³ *Carr v. State*, Del. Supr., 554 A.2d 778, 779, cert. denied, 493 U.S. 829 (1989).

⁴ Supr. Ct. R. 10(a).

⁵ Supr. Ct. R. 6; *Carr v. State*, 554 A.2d at 779.

⁶ *Bey v. State*, Del. Supr., 402 A.2d 362, 363 (1979).

Justice