

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |   |                              |
|--------------------|---|------------------------------|
| DAVID D. SMITH,    | § |                              |
|                    | § | No. 62, 2001                 |
|                    | § |                              |
| Defendant Below,   | § | Court Below—Superior Court   |
| Appellant,         | § | of the State of Delaware, in |
|                    | § | and for Kent County          |
| v.                 | § | Cr.A.Nos. IK95-05-0002 and   |
|                    | § | 0003                         |
| STATE OF DELAWARE, | § |                              |
|                    | § | Def. ID No. 9503021401       |
| Plaintiff Below,   | § |                              |
| Appellee.          | § |                              |

Submitted: February 21, 2001

Decided: March 6, 2001

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

**ORDER**

This 6<sup>th</sup> day of March 2001, upon consideration of the notice of appeal filed by David D. Smith (“Smith”), an inmate at the Delaware Correctional Center; the Clerk’s notice to show cause; and Smith’s response to the notice, it appears to the Court that:

(1) On February 8, 2001, the Court received Smith’s notice of appeal from the Superior Court’s order of January 8, 2001, that denied Smith’s motion for reduction of sentence. Upon receipt of the notice of appeal, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) that

directed Smith to show cause why the appeal should not be dismissed as untimely filed.

(2) Smith responded to the notice to show cause. In his response, Smith states that he both “filed” and “mailed” his notice of appeal on February 3, 2001, four days prior to the February 7 expiration of the 30-day appeal period.<sup>1</sup> Smith contends that he has no control over the delivery of mail from the prison, and that, under the circumstances, his notice of appeal should not be dismissed.

(3) Smith’s contentions are unavailing. This Court has previously considered and refused to create a separate “mailbox rule” for prisoners.<sup>2</sup> Any delay caused by the prison mail system cannot justify an enlargement of the 30-day appeal period.<sup>3</sup>

(4) Under Delaware law and procedure, a notice of appeal *must be received* by the office of the Clerk of this Court within the applicable time period.<sup>4</sup> Filing is not complete until the paper has been received by the office of the Clerk.<sup>5</sup> Unless an appellant can demonstrate that the failure to

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<sup>1</sup> See Supr. Ct. R. 6(a)(iii) (providing that a notice of appeal shall be filed in the office of the Clerk within 30 days after entry up on the docket of an order in any proceeding for post-conviction relief).

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

<sup>3</sup> *Dunham v. State*, Del. Supr., No. 407, 1986, Horsey, J., 1987 WL 36709 (Feb. 24, 1987) (ORDER).

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

<sup>5</sup> Supr. Ct. R. 10(a); *Carr v. State*, 554 A.2d at 779.

file a timely notice of appeal is attributable to court-related personnel, the appellant's untimely appeal cannot be considered.<sup>6</sup>

(5) The record does not reflect that Smith'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. The Court concludes that the appeal must be dismissed.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice

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