IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER M. TOTH, § § No. 128, 2003 Defendant Below, § § Appellant, Court Below: Superior Court § of the State of Delaware § in and for Sussex County v. 8 8 8 8 8 8 Cr. ID No. 0107003212 STATE OF DELAWARE, Plaintiff Below, Appellee.

> Submitted: December 1, 2003 Decided: December 10, 2003

ORDER

This 10th day of December 2003, it appears to the Court that:

- (1) On May 21, 2003, a Notice to Show Cause was issued to appellant Christopher M. Toth, directing him to show cause why this appeal should not be dismissed, pursuant to Supreme Court Rule 29(b), for his failure to diligently prosecute the appeal by not filing his opening brief and appendix. Toth's response to the Notice to Show Cause was filed June 5, 2003.
- (2) At the Court's request, the State replied to Mr. Toth's response on June 16,2003. Despite the State's objection, the Court, by letter from the Clerk dated September30, 2003, granted Toth an extension to file his opening brief by December 1, 2003. Toth

was informed that failure to file his opening brief by the deadline would result in dismissal of his appeal without further notice. Toth has failed to file his opening brief.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 3(b)(2) and 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice