

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH T. DEPUTY,	§	
	§	No. 107, 2004
Plaintiff Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for New Castle County in
	§	C.A. No. 02C-03-314.
ROY, Nurse Practitioner, THOMAS	§	
CARROLL, Warden, M. JANE	§	
BRADY, Attorney General,	§	
	§	
Defendants Below,	§	
Appellees.	§	

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

Submitted: April 5, 2004

Decided: June 29, 2004

ORDER

This 29th day of June 2004, upon consideration of the notice to show cause issued by the Clerk and the appellant’s “Motion to Show Cause,” it appears to the Court that:

(1) The appellant, Mr. Kenneth T. Deputy, is incarcerated at the Delaware Correctional Center. In April 2002, Deputy brought an action in the Superior Court against Roy Dekler, a nurse practitioner at the prison medical facility, Warden Thomas Carroll, and the Attorney General of the State of Delaware. By decision dated February 20, 2003, the Superior Court granted

summary judgment as to the claims against the Attorney General. By decision dated November 25, 2003, the Superior Court granted summary judgment as to the claims brought against Roy Dekler and Warden Carroll.

(2) On March 19, 2004, Deputy filed an untimely notice of appeal from the Superior Court's decision of November 25, 2003.¹ In a document entitled "Motion to Show Cause" that was filed with his notice of appeal, Deputy acknowledges the untimeliness of the appeal. He alleges, however, that the delay in filing his notice of appeal was caused by prison mail personnel, and he asks that the Court excuse the delay and accept the appeal.

(3) On March 19, 2004, the Clerk of this Court issued a notice directing that Deputy show cause why his appeal should not be dismissed as untimely filed. Deputy did not respond to the notice to show cause; however, the Court has considered his explanation for the untimeliness of his appeal, as well as his request to excuse the delay, as set forth in the "Motion to Show Cause."

(4) Deputy contends that he mailed the notice of appeal from the prison to the Supreme Court on December 18, 2003, and that the Court should

¹A timely notice of appeal was due "[w]ithin 30 days after entry upon the docket" of the November 25 decision, *i.e.*, on or before December 29, 2003. Supr. Ct. R. 6(a)(i).

have received the appeal prior to the expiration of the appeal period. Because the Court did not receive his notice of appeal, Deputy contends that the prison must have mishandled or misdirected his appeal papers, and he argues that he can not, and should not, be held liable for the prison's alleged mistake.²

(5) Deputy's argument is not persuasive. "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 to be effective.⁴ Any delay in the prison mail system mail system can not justify an enlargement of the jurisdictional appeal period.⁵ Unless Deputy can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal can not be considered.⁶

²In support of his claim that prison mail personnel mishandled or misdirected his notice of appeal, Deputy attaches an "outgoing legal/certified mail log" dated December 18, 2003. The mail log lists three destinations for Deputy's legal mail: (i) Kevin Connors, Esquire, located in Wilmington, Delaware; (ii) the Department of Justice located in Wilmington, Delaware; and (iii) the Superior Court located in Wilmington, Delaware. The New Castle County Superior Court docket in *Deputy v. Roy, et al.*, C.A. No. 02C-04-314 reflects that Deputy filed a copy of a notice of appeal on December 19, 2003.

³*Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

⁴*Id.*; Del. Code Ann. tit. 10, § 148; Supr. Ct. R. 6(a), 10(a).

⁵*Carr v. State*, 554 A.2d at 779.

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

(6) There is nothing in the record to reflect that Deputy'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 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