

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PETER KOSTYSHYN,	§	
	§	No. 168, 2004
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware, in
v.	§	and for New Castle County in
	§	IN02-07-2466 - 2470.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0109019316

Submitted: May 7, 2004

Decided: August 17, 2004

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 17th day of August 2004, upon consideration of the notice to show cause issued by the Clerk and the appellant’s response, it appears to the Court that:

(1) On April 27, 2004, the Court received Mr. Peter Kostyshyn’s untimely notice of appeal from the Superior Court resentencing on March 3, 2004.¹ The Clerk of the Court issued a notice pursuant to Supreme Court Rule 29(b) directing Kostyshyn to show cause why the appeal should not be dismissed as untimely filed.

¹Kostyshyn was originally sentenced on March 6, 2003, to eight years at Level V followed by six months at Level III. On March 3, 2004, the Superior Court resentenced Kostyshyn to five years at Level V suspended for time served and two years at Level IV Home Confinement suspended after six months for Level III. A timely notice of appeal was due “[w]ithin 30 days after entry upon the docket” of the March 3 resentencing order, *i.e.*, on or before April 8, 2004. Supr. Ct. R. 6(a)(iii).

In his response to the notice, Kostyshyn contends that he was represented by counsel in the Superior Court, and that his counsel failed to file a notice of appeal on his behalf.

(2) “Time is a jurisdictional requirement.”² A notice of appeal must be received by the Office of the Clerk within the applicable time period to be effective.³ Unless Kostyshyn can demonstrate that his failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered.⁴

(3) There is nothing in the record to reflect that Kostyshyn’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 Rules 6 and 29(b) that the appeal is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

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

³*Id.*; Del. Code Ann. tit. 10, § 147; Supr. Ct. R. 6(a), 10(a).

⁴*Bey v. State*, 402 A.2d 362, 363 (Del. 1979).