

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWIN MONTALVO,	§	
	§	No. 516, 2012
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court of
	§	the State of Delaware, in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	Cr. ID Nos. 0903024290
	§	0503020298
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 3, 2012

Decided: October 9, 2012

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

O R D E R

This 9th day of October 2012, upon consideration of the notice to show cause issued to the appellant, Edwin Montalvo, and Montalvo's response to the notice, it appears to the Court that:

(1) On September 19, 2012, the Court received Edwin Montalvo's untimely notice of appeal from his August 17, 2012 conviction and sentencing on a violation of probation. It appears that Montalvo's notice of appeal, which was captioned in the Superior Court, was initially filed with the Superior Court Prothonotary on September 14, 2012, and then forwarded to the Supreme Court Clerk on September 19, 2012. Pursuant to Supreme

Court Rule 6(a)(ii), Montalvo's properly-captioned notice of appeal should have been filed with the Clerk on or before September 17, 2012.¹

(2) On September 20, 2012, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing that Montalvo show cause why the appeal should not be dismissed as untimely filed.² In his response to the notice, Montalvo concedes that he mistakenly filed the appeal in the Superior Court, but he asserts that the appeal should not be dismissed as untimely because he mailed the appeal papers before the September 17, 2012 deadline.

(3) Montalvo's response to the notice is unavailing. 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 Filing a notice of appeal with the Superior Court within the applicable time period does not constitute compliance with the jurisdictional

¹ See Del. Supr. Ct. R. 6(a)(ii) (providing that a notice of appeal shall be filed in the office of the Clerk within thirty days after a sentence is imposed in a criminal conviction).

² See Del. Supr. Ct. R. 29(b) (governing involuntary dismissal upon notice of the Court).

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

⁴ Del. Supr. Ct. R. 10(a).

requirement governing this Court.⁵ Under Delaware law, the jurisdictional defect that was created by the untimely notice of appeal cannot be excused unless Montalvo can demonstrate that the delay in filing the appeal was attributable to court-related personnel.⁶

(4) In this case, nothing reflects that Montalvo's failure to timely file his notice of appeal is attributable to court personnel. Accordingly, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 6 and 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁵ *E.g.*, *Aleem-X v. Taylor*, 2008 WL 4325523 (Del. Supr.); *Smith v. State*, 2002 WL 31109924 (Del. Supr.) (dismissing untimely notice of appeal initially filed in error in Superior Court).

⁶ *See Riggs v. Riggs*, 539 A.2d 163, 164 (Del. 1988) (excusing untimely appeal that appellant mistakenly filed with Family Court when actions of Family Court personnel in response to notice of appeal suggested that appeal was properly filed); *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).