

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRYAN EVANS,	§
	§
Defendant Below-	§ No. 658, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID Nos. 0711033989
Plaintiff Below-	§ and 1204013802
Appellee.	§

Submitted: December 31, 2012

Decided: January 25, 2013

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

**ORDER**

This 25th day of January 2013, it appears to the Court that:

(1) On December 14, 2012, the Court received Bryan Evans' notice of appeal from a Superior Court order, dated November 13, 2012, which sentenced Evans for a violation of probation. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before December 13, 2012.

(2) The Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing Evans to show cause why the appeal should not be dismissed

as untimely filed.<sup>1</sup> Evans filed a response to the notice to show cause on December 31, 2012. He asserts that his appeal should not be deemed late because he placed it in the prison mail before December 13, 2012. Evans argues that prisoner documents are deemed filed on the date they are deposited in the prison mail system. He also contends that inmates are entitled to a three day grace period when service is made through the mail.

(3) Evans is incorrect. This Court has not adopted a rule similar to the federal prison mailbox rule.<sup>2</sup> In Delaware, time is a jurisdictional requirement.<sup>3</sup> A notice of appeal must be received by the Office of the Clerk of this Court within the applicable time period in order to be effective.<sup>4</sup> An appellant's pro se status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6.<sup>5</sup> Contrary to Evans' argument, there is no three-day grace period for inmates who file a notice of appeal. The time for taking an appeal may not be enlarged.<sup>6</sup> Unless an

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<sup>1</sup>Del. Supr. Ct. R. 6(a)(ii).

<sup>2</sup>*Smith v. State*, 47 A.3d 481, 482 (Del. 2012).

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

<sup>4</sup>Del. Supr. Ct. R. 10(a).

<sup>5</sup>*Carr v. State*, 554 A.2d at 779.

<sup>6</sup>Del. Supr. Ct. R. 11(b).

appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered.<sup>7</sup>

(4) Prison personnel are not court-related personnel. Consequently, even assuming prison personnel delayed mailing Evans' notice of appeal by a day or two, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal. Thus, the Court concludes that the within appeal must be dismissed.

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

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>7</sup>*Bey v. State*, 402 A.2d 362, 363 (Del. 1979).