

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONNIE O. WEAVER,	§
	§
Defendant Below-	§ No. 422, 2005
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 84002159DI
Plaintiff Below-	§
Appellee.	§

Submitted: October 3, 2005  
Decided: November 8, 2005

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

**ORDER**

This 8<sup>th</sup> day of November 2005, it appears to the Court that:

(1) On September 12, 2005, the Court received Donnie Weaver's notice of appeal from a Superior Court order, dated May 24, 2005, which denied his motion for correction of sentence. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before June 23, 2005.

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

dismissed as untimely filed.<sup>1</sup> Weaver filed a response to the notice to show cause on September 20. He asserts that he never received a copy of the May 24 order. He contends that he only found out about the Superior Court's denial of his motion for correction of sentence when he wrote to the Superior Court on September 1 requesting a copy of his docket sheet.

(3) The State has filed a reply to Weaver's response. The State points out that Weaver was designated as a "cc" at the bottom of the Superior Court's order, and thus there is a presumption that Weaver received a copy of the order.<sup>2</sup> The State asserts that Weaver's claim that he never received a copy of the order is unsubstantiated and, therefore, insufficient to overcome the presumption that the Superior Court provided him with a copy as reflected in the order.

(4) 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

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

<sup>2</sup> See *Johnson v. State*, 2002 WL 1038831 (Del. Supr.) (holding that court records are entitled to a presumption of regularity).

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

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

Supreme Court Rule 6.<sup>5</sup> Unless the 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>6</sup>

(5) There is nothing in the record to substantiate Weaver's claim that his 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. 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/ Myron T. Steele  
Chief Justice

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

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