

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KATHY M. SMITH,

Defendant Below,  
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,  
Appellee.

§

§ No. 104, 2002

§

§ Court Below: Superior Court  
§ of the State of Delaware,

§ in and for Kent County

§ Cr. A. No. K01-07-0584R1

§ Cr. ID No. 0107018103

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§

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Submitted: March 19, 2002

Decided: April 2, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

**ORDER**

This 2<sup>nd</sup> day of April 2002, upon consideration of the notice to show cause and the response and reply thereto, it appears to the Court that:

(1) On February 28, 2002, the appellant Kathy Smith filed a notice of appeal from the Superior Court's sentence of December 27, 2001. Pursuant to Supreme Court Rule 6, a timely notice of appeal from the December 27, 2001 sentence should have been filed on or before January 28, 2002.

(2) On March 4, 2002, the Assistant Clerk issued a notice, pursuant to Supreme Court Rule 29(b), directing Smith to show cause why the appeal should not be dismissed for her failure to file a timely notice of appeal. In her

response, Smith states that she had erroneously sent her appeal to the Superior Court. The Superior Court returned the notice of appeal and informed her that she had filed it in the wrong court. At that point, Smith forwarded the appeal to the Supreme Court.

(3) On March 19, 2002, the State filed a reply to Smith's response. The State asserts that this Court has no jurisdiction over Smith's untimely appeal because Smith has not established that her failure to file a timely notice of appeal is attributable to court personnel.

(4) We have considered the parties' respective positions carefully. Time is a jurisdictional requirement.<sup>1</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>2</sup> An appellant's *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements.<sup>3</sup> Unless an appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, the appeal cannot be considered.<sup>4</sup>

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<sup>1</sup> *Carr v. State*, 554 A.2d 778, 779 (Del. 1989), cert. denied, 493 U.S. 829 (1989).

<sup>2</sup> SUPR. CT. R. 10(a).

<sup>3</sup> SUPR. CT. R. 6; *Carr v. State*, 554 A.2d at 779.

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

(5) In this case, Smith was represented by counsel in the Superior Court proceedings. Even assuming that the failure to file a timely notice of appeal can be attributed to Smith's trial counsel, the jurisdictional defect caused by the untimely notice of appeal is not attributable to *court* personnel, and therefore the defect cannot be excused. 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 this appeal must be dismissed. We note that Smith's concerns about her counsel's performance may be addressed as part of the postconviction proceedings that currently are pending in the Superior Court.

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

BY THE COURT:

s/Joseph T. Walsh  
Justice

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