

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NYLES G. JARMON,	§
	§ No. 316, 2002
Defendant Below,	§
Appellant,	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware,
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 9509022629
	§
Respondent Below,	§
Appellee.	§

Submitted: June 26, 2002

Decided: July 23, 2002

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

**ORDER**

This 23<sup>rd</sup> day of July 2002, it appears to the Court that:

(1) On June 4, 2002, the appellant Nyles G. Jarmon filed an untimely notice of appeal from a Superior Court order, dated January 17, 2002, denying his first motion for postconviction relief. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before February 18, 2002.

(2) On June 4, 2002, the Clerk wrote a letter to Jarmon informing him that his notice of appeal from the January 17, 2002 judgment appeared to be untimely. Nonetheless, because the Superior Court docket reflected the entry of an order dated May 16, 2002, denying Jarmon's motion for modification of sentence, the Clerk

informed Jarmon that he could file an amended notice of appeal from the May 16 judgment if he so desired. Jarmon responded on June 7, indicating that he wished only to appeal the Superior Court's January 17 denial of postconviction relief. Accordingly, the Clerk issued a Rule to Show Cause why the appeal should not be dismissed as untimely.

(3) Jarmon filed a response in opposition. He contends that his notice of appeal from the January 17 judgment was late because he never received a copy of the order denying postconviction relief, and he was unaware that his attorney had not filed a notice of appeal from that order. Jarmon asserts that his appeal should not be dismissed because the failure to timely file the appeal was not his fault.

(4) Jarmon's argument is unavailing. Time is a jurisdictional requirement.<sup>1</sup> A notice of appeal *must* be received by the Office of the Clerk of the Supreme Court within the applicable time period in order to be effective.<sup>2</sup> Unless an appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel and is not attributable either to appellant or appellant's counsel, then the appeal cannot be considered.<sup>3</sup>

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

<sup>2</sup> Supr. Ct. R. 10(a).

<sup>3</sup> *Bey v. State*, Del. Supr., 402 A.2d 362, 363 (1979).

(5) There is nothing in the record to reflect that Jarmon'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. Unfortunately, the Court concludes that the within appeal must be dismissed.

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

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice