

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES FLOYD,	§
	§
Defendant Below-	§ No. 337, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0212002535
Plaintiff Below-	§
Appellee.	§

Submitted: July 18, 2006

Decided: August 23, 2006

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

ORDER

This 23rd day of August 2006, it appears to the Court that:

(1) On June 29, 2006, the Court received appellant James Floyd's notice of appeal from the Superior Court's sentencing order entered on February 3, 2006. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before March 5, 2006.

(2) The Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing Floyd to show cause why the appeal should not be dismissed as untimely filed.¹ Floyd's counsel filed a response to the notice to show

¹Del. Supr. Ct. R. 6(a)(ii).

cause on July 14, 2006, which acknowledges that the appeal is untimely. Counsel requests, however, that this Court vacate the Superior Court's February 3 sentencing order and remand the case to Superior Court for resentencing so that Floyd may be permitted to file a direct appeal. The State has filed a reply to counsel's response. The State contends that this appeal must be dismissed but agrees that the matter should be remanded to the Superior Court with directions to vacate and reimpose the February 3 sentence in order to give Floyd the opportunity to file a timely appeal.

(4) After careful consideration, we agree with the State's position. Time is a jurisdictional requirement.² 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.³ This Court has no jurisdiction to hear Floyd's untimely appeal. His appeal, therefore, must be dismissed. Nonetheless, under the unique circumstances of this case,⁴ we find it appropriate to remand this matter to the Superior Court with instructions to vacate and reimpose its February 3 sentencing order.

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

³Del. Supr. Ct. R. 10(a).

⁴ On May 31, 2006, the Superior Court entered an order granting Floyd's motion for postconviction relief on the ground that Floyd had not received the effective assistance of counsel in perfecting a direct appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the within appeal is DISMISSED. This matter is REMANDED to the Superior Court with instructions to vacate and reimpose its February 3 sentencing order. Jurisdiction is not retained.

BY THE COURT:

/s/Henry duPont Ridgely
Justice