

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN C. JOHNSON,	§	
	§	No. 83, 2014
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 9908026980
Appellee.	§	

Submitted: February 27, 2014
Decided: March 6, 2014

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

O R D E R

This 6th day of March 2014, it appears to the Court that:

(1) On February 19, 2014, the Court received John C. Johnson’s notice of appeal from a Superior Court opinion issued on January 17, 2014 denying Johnson’s motion for postconviction relief. Pursuant to Supreme Court Rule 6(a)(iii), the appeal should have been filed on or before February 17, 2014.¹

(2) On February 19, 2014, the Clerk issued a notice pursuant to Supreme Court Rule 29(b), directing Johnson to show cause why the appeal should not be dismissed as untimely filed. In his response to the notice, Johnson asserts that the

¹ See Del. Supr. Ct. R. 6(a)(iii) (providing that an appeal must be filed within 30 days of a judgment or order in any proceeding for postconviction relief).

delay in filing the notice of appeal was due to “state of emergency (snow), Institution shutdown, and recurring mail room problems,” and he asks to be excused from the delay.

(3) Under Delaware law, “[t]ime is a jurisdictional requirement.”² A notice of appeal must be received by the Office of the Clerk within the time period to be effective.³ An untimely appeal cannot be considered unless an appellant can demonstrate that the failure to timely file the notice of appeal is attributable to court-related personnel.⁴

(4) In this case, Johnson does not contend, and the record does not reflect, that his failure to file a timely notice of appeal is attributable to court personnel.⁵ Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

² *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

³ Del. Supr. Ct. R. 10(a).

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

⁵ See *Zuppo v. State*, 2011 WL 761523 (Del. March 3, 2011) (holding that prison personnel are not court personnel).