

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREELY BALL,	§	No. 474, 2006
	§	
Defendant Below,	§	Court Below—Superior Court
Appellant,	§	of the State of Delaware, in
	§	and for New Castle County
v.	§	
	§	C.A. No. 06M-07-098
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 10, 2006  
Decided: November 3, 2006

Before **HOLLAND, BERGER, and JACOBS**, Justices

**ORDER**

This 3<sup>rd</sup> day of November 2006, it appears to the Court that:

(1) On September 5, 2006, the Court received appellant Greely Ball's notice of appeal from the Superior Court's order docketed August 2, 2006, denying Ball's petition for writ of habeas corpus. Upon receipt of the notice of appeal, the Clerk issued a notice, pursuant to Supreme Court Rule 29(b), directing Ball to show cause why the appeal should not be dismissed as untimely filed.

(2) The Court received Ball's response to the notice to show cause on September 14, 2006. In his response, Ball states that he mailed his notice of appeal to the only address he could find for the Delaware Supreme Court, which was 500

North King Street in Wilmington.<sup>1</sup> The notice of appeal was returned to Ball with a memorandum from the Prothonotary of the Superior Court informing him that he had mailed his notice of appeal to the wrong address and giving him the correct address. Ball re-mailed his notice of appeal to the correct address on August 30, 2006. He contends that his notice of appeal should be deemed filed from the date he put it in the prison mailbox.

(3) On October 10, 2006, the State filed a memorandum in support of dismissal, arguing that since Ball's notice of appeal was not received in the Clerk's office in a timely manner,<sup>2</sup> the appeal must be dismissed. The State also states that Delaware does not follow the federal "mailbox rule" for prisoners and that the fact that Mr. Ball re-mailed his notice of appeal on August 30 is immaterial.

(4) Ball's contentions are unavailing. This Court has previously considered and refused to create a separate "mailbox rule" for prisoners.<sup>3</sup> Under Delaware law, a notice of appeal *must be received* by the office of the Clerk of this Court within the applicable time period.<sup>4</sup> Filing is not complete until the paper has

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<sup>1</sup> The Delaware Supreme Court has never been located at 500 N. King Street in Wilmington.

<sup>2</sup> See Supr. Ct. R. 6(a)(iii) (providing that a notice of appeal shall be filed in the office of the Clerk within 30 days after entry up on the docket of an order in any proceeding for post-conviction relief).

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

<sup>4</sup> Supr. Ct. R. 6(a); *Carr v. State*, 554 A.2d at 779.

been received by the office of the Clerk.<sup>5</sup> Unless an appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, the appellant's untimely appeal cannot be considered.<sup>6</sup>

(5) The record does not reflect that Ball'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. The Court concludes that the appeal must be dismissed.

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

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>5</sup> Supr. Ct. R. 10(a); *Carr v. State*, 554 A.2d at 779.

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