

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAFAYETTE E. MILLER,	§	
	§	No. 668, 2006
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0403022047
Appellee.	§	

Submitted: January 4, 2007

Decided: February 28, 2007

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

**ORDER**

This 28<sup>th</sup> day of February 2007, upon consideration of the notice of appeal filed by the appellant, the notice to show cause issued by the Clerk, and the appellant's response to the notice to show cause, it appears to the Court that:

(1) The appellant, Lafayette E. Miller, is an inmate at a correctional facility in Delaware. On December 22, 2006, Miller filed a notice of appeal dated December 18, 2006 from a decision dated and docketed in the Superior Court on November 20, 2006.<sup>1</sup>

(2) The Clerk issued a notice directing that Miller show cause why the appeal should not be dismissed as untimely for his failure to file the notice of

---

<sup>1</sup>*State v. Miller*, Del. Super. Ct, Cr. ID No. 0403022047, Cooch, J. (Nov. 20, 1996).

appeal within thirty days of the Superior Court's decision.<sup>2</sup> Miller responded that he mailed the notice of appeal from the Delaware Correctional Center on Sunday, December 17, 2006, in an envelope addressed to the Supreme Court in Wilmington, New Castle County.

(3) Under Delaware law and procedure, a notice of appeal must be received within thirty days.<sup>3</sup> A notice of appeal may be filed by mail with a Deputy Clerk in any county.<sup>4</sup> Filing is not complete, however, until the notice of appeal has been received by the Deputy 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, an untimely appeal cannot be considered.<sup>6</sup>

(4) The envelope enclosing Miller's notice of appeal is postmarked Tuesday, December 19, 2006. The envelope was received and the enclosed notice of appeal was filed on Friday, December 22, 2006, by a Supreme Court Deputy Clerk in New Castle County.

(5) Miller's notice of appeal was filed thirty-two days after the docketing of the decision from which the appeal was taken. The record does

---

<sup>2</sup>Del. Supr. Ct. R. 6(a)(iii) (2007).

<sup>3</sup>Del. Supr. Ct. R. 6(a), 10(a) ; *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

<sup>4</sup>Del. Supr. Ct. R. 10(a).

<sup>5</sup>*Id.*

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

not reflect that Miller's failure to file the notice of appeal within thirty days is related to court-related personnel. 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 Rule 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice