

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN GOTWALS,	§
	§ No. 381, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0406005092
	§
Plaintiff Below-	§
Appellee.	§

**ORDER**

This 29<sup>th</sup> day of March 2007, it appears to the Court that:

(1) This is an appeal from the Superior Court’s June 21, 2006 order denying Gotwals’ motion for postconviction relief, which claimed that he did not receive sufficient credit for time spent at Level V incarceration when the Superior Court sentenced him for a violation of probation (“VOP”). On November 20, 2006, this Court remanded this matter to the Superior Court for clarification of its VOP sentencing order. On December 22, 2006, after issuing a modified VOP sentencing order, the Superior Court returned the matter from remand.

(2) On January 5, 2007, the Clerk issued a notice to show cause why Gotwals’ appeal should not be dismissed as moot in light of the Superior Court’s modified VOP sentencing order. The State responded to

the notice to show cause and stated that it was possible Gotwals still had not been properly credited with time spent at Level V incarceration. Gotwals did not respond to the notice to show cause.

(3) The Clerk issued a second notice to show cause on January 29, 2007 and requested Gotwals to respond to the State's position. The notice stated that, unless Gotwals responded within 10 days of receipt of the notice, dismissal of the appeal would be deemed to be unopposed.<sup>1</sup> The record reflects certified receipt of the second notice to show cause on February 1, 2007. Because Gotwals had been released from prison, however, a copy of the notice was re-sent first class mail to his last-known address on February 9, 2007. As of this date, Gotwals still has not responded to the notice to show cause.

(4) Because Gotwals has failed to respond to the notice to show cause within the required ten day period, dismissal of this appeal is deemed to be unopposed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 3(b) (2) and 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>1</sup> Supr. Ct. R. 3(b) (2) and 29(b).