

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTOINETTE HARRIS,	§
	§
Defendant Below-	§ No. 451, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 9608016951
Plaintiff Below-	§
Appellee.	§

Submitted: April 23, 2007

Decided: July 5, 2007

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

ORDER

This 5th day of July 2007, it appears to the Court that:

(1) On November 22, 2006, the Court issued an order remanding this matter to the Superior Court for findings of fact and conclusions of law regarding whether the appellant, Antoine Harris, had been informed of his right to appeal by his court-appointed counsel following his VOP hearing on June 21, 2006. On March 23, 2007, the Superior Court filed its report following remand. The Superior Court, after holding a hearing, found as a matter of fact and concluded as a matter of law that Harris had never been informed of a right to appeal following his June 2006 VOP sentencing.

(2) We directed the parties' to file submissions in response to the Superior Court's report on remand. The State asserts in its supplemental response that there is neither an absolute right to counsel on appeal from a VOP adjudication, nor is there a duty under Supreme Court Rule 26 for counsel to advise the client of any right to appeal from a VOP adjudication. Therefore, the State concludes, Harris' untimely appeal could not be the result of any arguable ineffective assistance of counsel and, thus, should not be permitted. Harris disputes the State's arguments and contends that the Superior Court's report on remand sets forth a basis for permitting his untimely appeal to proceed.

(3) After careful consideration of the parties' positions, the Court has determined that this matter should be remanded to the Superior Court with instructions to vacate its June 2006 VOP sentencing order and to resentence Harris, with the assistance of counsel, in order to permit him the opportunity to file a timely appeal. Although Supreme Court Rule 26 does not explicitly impose a continuing obligation on court-appointed counsel in VOP proceedings to represent the client on appeal, we conclude that counsel, at a minimum, has an ethical duty to inform the client of the right to appeal¹ and that the failure of Harris' court-appointed counsel to inform him

¹ *Accord* Del. Lawyers' R. Prof. Cond. 1.2(c), 1.3 cmt. 4 (2007).

of his appeal rights in this case is grounds for granting Harris' motion for reargument.

NOW, THEREFORE, IT IS ORDERED that Harris' motion for reargument is GRANTED, in part. The Court's order dated October 3, 2006, which dismissed Harris' appeal as untimely, is hereby RESCINDED. This matter is hereby REMANDED to the Superior Court for further proceedings consistent with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Randy J. Holland
Justice