

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHON SAMPLE,	§
	§
Defendant Below-	§ No. 507, 2007
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0405022601
Plaintiff Below-	§
Appellee.	§

Submitted: October 4, 2007
Decided: October 26, 2007

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

ORDER

This 26th day of October 2007, it appears to the Court that:

(1) On September 24, 2007, the Court received Stephon Sample's notice of appeal from a Superior Court order, dated March 2, 2005, which apparently denied Sample's pretrial suppression motion. Sample pled guilty to trafficking in cocaine on March 3, 2005 and was sentenced to 25 years imprisonment, to be suspended after serving ten years. Sample did not file a direct appeal.

(2) The Senior Court Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing Sample to show cause why the appeal should not

be dismissed as untimely filed. Sample filed a response to the notice to show cause on October 4, 2007. He asserts that his counsel was ineffective for failing to perfect a timely direct appeal from his sentencing in 2005. He argues that the Court, in the interest of justice, should permit him to appeal now.

(3) Time is a jurisdictional requirement.¹ A notice of appeal must be received by the Office of the Clerk of this Court within the applicable time period in order to be effective.² Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered.³ Defense counsel is not court-related personnel. Accordingly, even assuming defense counsel was responsible for failing to file a direct appeal, we cannot consider Sample's untimely appeal now. Sample's sole remedy for his counsel's alleged ineffectiveness is through the postconviction process.⁴

¹*Carr v. State*, 554 A.2d 778, 779 (Del.), *cert. denied*, 493 U.S. 829 (1989).

²Del. Supr. Ct. R. 10(a).

³*Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

⁴The Superior Court docket reflects that Sample filed a motion for postconviction relief in the Superior Court raising his counsel's alleged ineffectiveness. The Superior Court denied that motion on March 19, 2007. We affirmed the Superior Court's judgment. *Sample v. State*, Del. Supr., No. 278, 2007, Jacobs, J. (Oct. 22, 2007).

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice