

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID JENKINS,	§	
	§	No. 277, 2007
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	CR. ID No. 0104000981
Appellee.	§	

Submitted: October 26, 2007
Decided: November 6, 2007

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

ORDER

This 6th day of November 2007, upon consideration of the notice to show cause and the appellant's response to the notice to show cause, it appears to the Court that:

(1) On June 1, 2007, the appellant, David Jenkins, filed a notice of appeal from the Superior Court's April 3, 2007 denial of his motion for postconviction relief.¹ By letter dated June 4, 2007, the Senior Court Clerk advised Jenkins that his appeal appeared to be untimely filed.²

¹ It appears from the docket that Jenkins was represented by counsel in the Superior Court.

² See Del. Supr. Ct. R. 6(a)(iii) (providing that an appeal from the denial of postconviction relief must be filed within thirty days).

(2) The Senior Court Clerk advised Jenkins that if he intended to appeal a more recent Superior Court order, he was required to file an amended notice of appeal.³ Jenkins did not respond to the Senior Court Clerk and did not file an amended notice of appeal.

(3) On August 17, 2007, the Clerk issued a notice directing that Jenkins show cause why his appeal should not be dismissed.⁴ Jenkins filed an untimely response to the notice to show cause on October 26, 2007.

(4) In his response, Jenkins does not address his failure to file a timely notice of appeal, to respond to the Senior Court Clerk, and/or to timely respond to the notice to show cause. Instead, Jenkins complains that an attorney he hired to file a motion for modification of sentence failed to inform him that the Superior Court denied the motion on September 10, 2007.⁵

(5) “Time is a jurisdictional requirement.”⁶ Under Delaware law and procedure, the Clerk of this Court must receive a notice of appeal within the applicable time period.⁷ In this case, Jenkins has demonstrated no basis

³ It appeared from the docket that the Superior Court had issued an order on May 24, 2007, denying Jenkins’ May 4, 2007 *pro se* motion for modification of sentence.

⁴ See Del. Supr. Ct. R. 29(b) (governing involuntary dismissal upon notice of the Court).

⁵ It appears from the Superior Court docket that Jenkins, through counsel, filed a motion for modification of sentence on August 23, 2007. It appears that the motion was denied by an order docketed on September 10, 2007.

⁶ *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

⁷ Del. Supr. Ct. R. 6(a), 10(a); *Carr*, 554 A.2d at 780.

upon which to excuse his untimely appeal from the Superior Court's April 3, 2007 denial of postconviction relief.⁸

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁸ See *Bey v. State*, 402 A.2d 362, 363 (Del. 1979) (providing that an untimely appeal cannot be considered unless appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel).