IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD F. ROTH, SR.,	§	
	§	No. 452, 2012
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. 9901000322
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: September 27, 2012
Decided: October 26, 2012

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

O R D E R

This 26th day of October 2012, it appears to the Court that:

(1) On August 13, 2012, the Court received the *pro se* notice of appeal of the defendant-appellant, Richard F. Roth, Sr., from the Superior Court's January 6, 2012 order denying his motion for postconviction relief.[1] Pursuant to Supreme Court Rule 6, a timely notice of appeal from the Superior Court's January 6, 2012 order should have been filed on or before February 6, 2012.

[1] Roth was found guilty by a Superior Court jury of Murder in the First Degree and was sentenced to life in prison. This Court affirmed his conviction on direct appeal. *Roth v. State*, Del. Supr., No. 197, 2001, Walsh, J. (Mar. 11, 2002). The Superior Court appointed counsel to represent Roth on his first postconviction motion.

(2) On August 14, 2012, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing Roth to show cause why the appeal should not be dismissed as untimely filed. Roth filed his response to the notice to show cause on September 11, 2012. He states that he never received a copy of the Superior Court's decision. Moreover, his appointed counsel did not contact him to let him know about the decision and failed to file a notice of appeal on his behalf.

(3) On September 12, 2012, the Court requested that Roth's counsel and the State file responses to Roth's claims. In his response, Roth's counsel confirms that he was appointed by the Superior Court to represent Roth on his first postconviction motion. He further states that he never received a copy of the Superior Court's January 6, 2012 decision. He, finally, states that, if this matter is remanded, he will ask the Superior Court to re-issue its decision so that a timely appeal may be filed.

(4) In its response, the State asserts that, because it appears that Roth became aware of the Superior Court's order on or about July 22, 2012, his notice of appeal, which was filed on August 13, 2012, should be considered as timely filed. The State further states that, given the unusual circumstances presented, Roth's counsel should be given an opportunity to file an entry of appearance and an amended notice of appeal in proper form.

(5) Under the unique circumstances presented here, we conclude, in the interests of justice and efficiency, that this matter should be remanded to the Superior Court for re-issuance of its January 6, 2012 order so that Roth's counsel may file a timely notice of appeal in this Court.

NOW, THEREFORE, IT IS ORDERED that this matter is REMANDED to the Superior Court for re-issuance of its January 6, 2012 order.

BY THE COURT:

/s/ Carolyn Berger
Justice