## IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIC AMARO, §

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Defendant Below- § No. 63, 2013

Appellant,

§

v. § Court Below—Superior Court

§ of the State of Delaware,

STATE OF DELAWARE, § in and for Sussex County

Cr. ID 1207002417

Plaintiff Below-Appellee. §

> Submitted: March 6, 2013 Decided: March 13, 2013

Before STEELE, Chief Justice, JACOBS, and RIDGELY, Justices.

## ORDER

This 13<sup>th</sup> day of March 2013, it appears to the Court that:

- (1) On February 13, 2013, the Court received appellant Eric Amaro's *pro se* notice of appeal from the Superior Court's sentencing order imposed on January 11, 2013. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before February 11, 2013.<sup>1</sup>
- (2) The Clerk issued separate notices to Amaro and to his trial counsel of record directing each to show cause why the appeal should not be dismissed as untimely filed. Amaro's counsel filed a response to the notice to show cause on

<sup>&</sup>lt;sup>1</sup>Del. Supr. Ct. R. 6(a)(ii).

February 25, 2013, which acknowledges that Amaro's *pro se* notice of appeal was not timely and states that counsel did not file a timely notice of appeal because there was no basis for an appeal. Counsel's response does not indicate whether

Amaro instructed him to file a notice of appeal on his behalf.

(3) The State has filed a reply to counsel's response. The State contends that the record is ambiguous regarding whether Amaro instructed his counsel to

file an appeal on his behalf, notwithstanding counsel's opinion regarding the

relative merits of an appeal. The State indicates that it does not object to

remanding this matter to the Superior Court for resentencing in order to allow

Amaro, with counsel's assistance, the opportunity to file a timely notice of appeal.

(4) We agree that the proper course of action is to remand this matter to

the Superior Court. Upon remand, the Superior Court should resentence Amaro to

permit his counsel the opportunity to file a timely appeal. Resentencing shall take

place upon notice to the parties as soon as practicable but no later than 30 days

from the date of this order.

NOW, THEREFORE, IT IS HEREBY ORDERED that the within matter is

REMANDED to the Superior Court for further action in accordance with this

order. Jurisdiction is not retained.

BY THE COURT:

/s/ Henry duPont Ridgely

**Justice** 

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