## IN THE SUPREME COURT OF THE STATE OF DELAWARE

CORNELL HESTER,	§	
	§	No. 671, 2012
Defendant Below,	§	
Appellant,	§	Court Below-Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0912010604
Appellee.	8	

Submitted: February 4, 2013 Decided: March 12, 2013

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

## ORDER

This 12<sup>th</sup> day of March 2013, having considered the Clerk's notice to show cause, the appellant's response, the appellee's answer, the appellant's reply, and the appellant's motion for the appointment of counsel, it appears to the Court that:

- (1) The appellant, Cornell Hester, is an inmate incarcerated at a Department of Correction facility. This appeal is from the Superior Court's denial of Hester's motion for postconviction relief.
- (2) An appeal from the denial of postconviction relief must be filed within thirty days after entry upon the docket of the Superior Court's order.<sup>1</sup> The

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

time period within which to file a notice of appeal is jurisdictional and thus mandatory.<sup>2</sup>

- (3) In this case, the order denying Hester's postconviction motion was docketed on November 21, 2012. To be timely filed, an appeal would have to be filed on or before December 21, 2012. The Clerk did not receive Hester's notice of appeal until December 26, 2012.
- (4) On December 26, 2012, the Clerk issued a notice directing that Hester show cause why the appeal should not be dismissed as untimely filed.<sup>3</sup> In his response to the Clerk's notice and his reply to the appellee's answer, Hester asserts, in pertinent part, that the appeal should not be dismissed as untimely because he mailed the appeal papers on December 18, 2012, three days before the December 21, 2012 deadline.
- (5) Mailing a notice of appeal within the applicable time period does not constitute compliance with the jurisdictional requirement governing this Court.<sup>4</sup> A notice of appeal must be received by the Clerk within the applicable time period to be effective.<sup>5</sup>
- (6) Under Delaware law, the jurisdictional defect that was created by the untimely appeal cannot be excused unless Hester can demonstrate that the delay in

<sup>&</sup>lt;sup>2</sup> Carr v. State, 554 A.2d 778, 779 (Del. 1989).

<sup>&</sup>lt;sup>3</sup> Del. Supr. Ct. R. 29(b).

<sup>&</sup>lt;sup>4</sup> Smith v. State, 47 A.3d 481, 486 (Del. 2012).

<sup>&</sup>lt;sup>5</sup> Del. Supr. Ct. R. 10(a).

filing the appeal was attributable to court-related personnel.<sup>6</sup> In this case, there is nothing in the record reflecting that Hester's failure to timely file his notice of appeal is attributable to court personnel. Accordingly, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal.

(7) Hester filed a motion for appointment of counsel in connection with his appeal. To the extent Hester seeks counsel to assist him in remedying the jurisdictional defect created by the untimely appeal, the motion is futile and granting it is unwarranted. To the extent Hester seeks the appointment of counsel to assist him in challenging the Superior Court's denial of postconviction relief, the motion is rendered moot by the Court's dismissal of this appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED. The motion for appointment of counsel is denied as MOOT.

BY THE COURT:

/s/ Randy J. Holland

**Justice** 

<sup>&</sup>lt;sup>6</sup> Riggs v. Riggs, 539 A.2d 163, 164 (Del. 1988); Bey v. State, 402 A.2d 362, 363 (Del. 1979).