## IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

	)	
	)	
JOHN C. JOHNSON	)	
	)	
v.	)	I.D. No. 9908026980
	)	
STATE OF DELAWARE	)	
	)	
	)	

Submitted: May 9, 2013 Decided: May 20, 2013

Upon Defendant's Application for Certification of an Interlocutory Appeal. **DENIED.** 

## **ORDER**

Joseph S. Grubb, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

John C. Johnson, James T. Vaughn Correctional Center, Smyrna, Delaware, pro se.

COOCH, R.J.

This 20th day of May, 2013, upon consideration of Defendant's Application for Certification of an Interlocutory Appeal, it appears to the Court that:

- 1. The defendant, John C. Johnson, claims that he has a right to the assistance of counsel in his second proceeding for postconviction relief. In his motion under Superior Court Criminal Rule 61, he asked the Court to appoint counsel to assist him. 2
- 2. On April 22, 2013, the Court denied Mr. Johnson's request for counsel.<sup>3</sup> Two days later, the Prothonotary entered the Court's order into the docket.<sup>4</sup>
- 3. Mr. Johnson is now asking the Court to certify an interlocutory appeal of the order.<sup>5</sup> The application is **DENIED** for two reasons:
  - a. Mr. Johnson filed his application late and
  - b. The Supreme Court may not hear an interlocutory appeal in a criminal case.
- 4. First, Mr. Johnson filed his application late. Under Supreme Court Rules 11 and 42, because the Prothonotary entered the order into the docket on April 24, 2013, he needed to file his application by May 6, 2013.<sup>6</sup> But the Prothonotary did not receive the application until May 9, 2013.<sup>7</sup> Thus, Mr. Johnson's application was untimely.

<sup>&</sup>lt;sup>1</sup> Def.'s Mot. Attach. 7.

<sup>&</sup>lt;sup>2</sup> *Id.* 

<sup>&</sup>lt;sup>3</sup> Johnson v. State, I.D. No. 9908026980 (Del. Super. Apr. 22, 2013) (Cooch, R.J.) (ORDER).

<sup>&</sup>lt;sup>4</sup> The Prothonotary stamped the original as filed on May 9, 2013.

<sup>&</sup>lt;sup>5</sup> Def.'s Application 1.

<sup>&</sup>lt;sup>6</sup> Under Supreme Court Rule 42(c)(i), an application must be "filed within 10 days of the entry of the order from which the appeal is sought..." Supr. Ct. R. 42(c)(i). This would be May 4, 2013 – a Saturday. But, per Supreme Court Rule 11, the deadline is the

- 5. Second, the Supreme Court may not hear an interlocutory appeal in a criminal case. Article IV, Section 11 of the Delaware Constitution governs the Supreme Court's jurisdiction.<sup>8</sup> Under that Section, the Supreme Court may hear an appeal from a final judgment in a criminal case.<sup>9</sup> However, the Supreme Court has held that it may not hear an appeal from a judgment in criminal case if the judgment is not final.<sup>10</sup> As such, the Supreme Court could not review the Court's interlocutory order, even if the Court certified the appeal.
- 6. Based on the foregoing, the application for certification of an interlocutory appeal is **DENIED**.

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Richard R.	Cooch,	R.J

cc: Prothonotary

following Monday – May 6, 2013. *See* Super. Ct. R. 11(a) ("The last day of the period...shall be included, unless it is a Saturday or Sunday, ... in which event the period shall run until the end of the next day on which the office of the Clerk is open.").

<sup>&</sup>lt;sup>7</sup> See supra note 4 and accompanying text.

<sup>&</sup>lt;sup>8</sup> Del. Const. art. IV, § 11.

<sup>&</sup>lt;sup>9</sup> Del. Const. art. IV, § 11(1)(b); Gannett Co., Inc. v. State, 565 A.2d 895, 899 (Del. 1989) (citing Del. Const. art. IV, § 11(1)(b) and State v. Cooley, 430 A.2d 789, 791 n.2 (Del. 1981)).

 $<sup>^{10}</sup>$  Rash v. State, 318 A.2d 603, 604 (Del. 1974) (citing Hodsdon v. Superior Court, 239 A.2d 222, 224 (Del. 1968) and Hunter v. State, 209 A.2d 469, (Del. 1965)).