

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID K. ALLEN,	§
	§ No. 563, 2012
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1202017853
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 13, 2012

Decided: November 20, 2012

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

**ORDER**

This 20<sup>th</sup> day of November 2012, upon consideration of the notice to show cause, the appellant’s response and the State’s reply, it appears to the Court that:

(1) On October 18, 2012, the Court received the appellant’s notice of appeal from the Superior Court’s September 12, 2012 violation of probation (“VOP”) sentencing order.<sup>1</sup> Pursuant to Supreme Court Rule 6, a timely notice of appeal from the September 12, 2012 order should have been filed on or before October 12, 2012.

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<sup>1</sup> The notice of appeal was forwarded from the Prothonotary’s Office, Superior Court, New Castle County. It was received by the Prothonotary on October 5, 2012.

(2) On October 18, 2012, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing the appellant to show cause why the appeal should not be dismissed as untimely filed. The appellant filed his response to the notice to show cause on October 26, 2012. The appellant states that he did not know there was ammunition in a duffel bag left in his closet and, therefore, does not believe he should have been sentenced for a VOP. The appellant provides no other explanation for his untimely appeal.

(3) Pursuant to Rule 6(a) (ii), a notice of appeal from a VOP sentencing order must be filed within 30 days of the date sentence is imposed. Time is a jurisdictional requirement.<sup>2</sup> A notice of appeal must be received by the Office of the Clerk of this Court within the applicable time period in order to be effective.<sup>3</sup> An appellant's *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements of Rule 6.<sup>4</sup> Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal may not be considered.<sup>5</sup>

(4) There is nothing in the record reflecting that the appellant's failure to file a timely notice of appeal in this case is attributable to court-related personnel. While the notice of appeal was received by the Prothonotary within the applicable

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

<sup>3</sup> Supr. Ct. R. 10(a).

<sup>4</sup> *Carr v. State*, 554 A.2d at 779.

<sup>5</sup> *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

time period, this Court has previously ruled that filing a notice of appeal with the Prothonotary within the applicable time period does not constitute compliance with the jurisdictional requirements of this Court.<sup>6</sup> Consequently, this appeal does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal. Thus, the Court concludes that this appeal must be dismissed.

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

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>6</sup> *Joyner v. State*, 2007 WL 1301086 (Del. May 4, 2007); *Sheldon v. State*, 2010 WL 2796621 (Del. July 15, 2010).