IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN FOREHAND,	§	
	§	No. 576, 2012
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court of
	§	the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0809000884
Appellee.	§	

Submitted: December 12, 2012
Decided: February 25, 2013

Before **HOLLAND, JACOBS** and **RIDGELY,** Justices.

O R D E R

This 25th day of February 2013, upon consideration of the notice to show cause issued by the Clerk, the response to the notice to show cause filed by the appellant, Kevin Forehand, the answer to Forehand's response filed by the appellee, State of Delaware, and Forehand's reply to the State's answer, it appears to the Court that:

(1) Kevin Forehand is an inmate incarcerated at a Department of Correction facility. On May 3, 2012, Forehand filed a motion for correction of sentence in the Superior Court. The Superior Court denied the motion in an order docketed on May 16, 2012. Forehand filed an appeal from the

order on October 24, 2012. An appeal from an order denying a sentence correction motion must be filed within 30 days after entry upon the docket of the order.[1] On its face, Forehand's notice of appeal was untimely filed.

(2) The time period within which to file a notice of appeal is mandatory and jurisdictional.[2] An untimely appeal cannot be considered unless the appellant demonstrates that the delay in filing the notice of appeal is attributable to court-related personnel.[3]

(3) On October 24, 2012, the Clerk issued a notice directing that Forehand show cause why his appeal should not be dismissed as untimely filed.[4] Forehand filed a response contending that the delay in filing his appeal was caused by the Superior Court's failure to send him the order denying his motion for correction of sentence.

(4) Forehand avers that he did not know that the Superior Court had decided his motion for correction of sentence, and was not made aware of the May 16, 2012 order, until July 20, 2012, when he received a court docket sheet that he had requested from the prothonotary. Forehand further avers that, upon receiving the docket sheet and realizing that the Superior Court had denied his motion, Forehand wrote to the prothonotary and

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[1] Del. Supr. Ct. R. 6(a)(iii).
[2] *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).
[3] *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).
[4] *See* Del. Supr. Ct. R. 29(b) (governing involuntary dismissal upon notice of the Court).

requested a copy of the order. After three months with no response from the prothonotary, Forehand filed his notice of appeal. According to Forehand, he has yet to receive a copy of the May 16, 2012 order denying his motion for correction of sentence.[5]

(5) Forehand contends that the delay in filing his notice of appeal is attributable to the Superior Court's initial failure to send him a copy of the May 16, 2012 order, followed by the prothonotary's failure to comply with his request for a copy of the order. Under these circumstances, Forehand requests that the Court discharge the notice to show cause.

(6) Forehand's response to the notice to show cause is supported by the prison incoming and outgoing mail logs that he attached to the response. Based on his response, however, we are constrained to deny Forehand's request to accept his appeal as timely filed. On similar facts in previous cases, we have dismissed an untimely appeal when the appellant failed to file the notice of appeal within thirty days of receiving a docket sheet notifying the appellant of the court's decision.[6] Forehand's case does not warrant different treatment.

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[5] It appears from the Supreme Court docket, however, that a copy of the order was sent to Forehand on February 18, 2013.

[6] *See Barnett v. State*, 2006 WL 2371338 (Del. Supr.); *Davis v. State*, 2000 WL 949647 (Del. 2000).

(7) It was incumbent on Forehand to file the notice of appeal within thirty days of July 20, 2012, the date he admittedly received the docket sheet notifying him that the Superior Court had denied his motion for correction of sentence. Forehand waited three months after receiving the docket sheet to file the notice of appeal.

(8) The record does not reflect that court-related personnel prevented Forehand from filing his notice of appeal within thirty days of his receipt of the docket sheet notifying him of the Superior Court's denial of his motion for correction of sentence. Under these circumstances, we are compelled to conclude that Forehand's appeal was untimely filed.

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

BY THE COURT:

/s/ Henry duPont Ridgely
Justice