

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JUSTIN WHITEMAN,	§	
	§	
Defendant Below,	§	No. 361, 2020
Appellant,	§	
	§	Court Below - Superior Court
v.	§	of the State of Delaware
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 1703008734 (K)
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 4, 2020

Decided: January 11, 2021

Before **SEITZ**, Chief Justice; **TRAYNOR** and **MONTGOMERY-REEVES**, Justices.

ORDER

After consideration of the notice to show cause and the responses, it appears to the Court that:

(1) On October 29, 2020, the appellant, Justin Whiteman, filed a notice of appeal from a September 22, 2020 Superior Court violation-of-probation order. Under Supreme Court Rules 6 and 11, a timely notice of appeal should have been filed on or before October 22, 2020.

(2) On November 2, 2020, the Senior Court Clerk issued a notice directing Whiteman to show cause why this appeal should not be dismissed as untimely filed. In response to the notice to show cause, Whiteman states that his efforts to file a

notice of appeal were delayed because of restrictions related to the COVID-19 pandemic, including imposition of a fourteen-day quarantine period following his transfer from the violation-of-probation center and limited access to the law library. In response, the State observes that, during the period for taking an appeal, Whiteman was able to send a letter to the Superior Court, in which he indicated that he desired to appeal. The State also represents that incarcerated persons are permitted to correspond with the law library in writing during quarantine periods.

(3) This Court lacks jurisdiction to consider an appeal when the notice of appeal is not timely filed, unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel.¹ A notice of appeal must be received by the Court within the applicable time period to be effective.² Although this Court issued an order extending filing deadlines that expired between March 23, 2020 and June 30, 2020, due to the COVID-19 pandemic, the October 22, 2020, deadline for Whiteman to file his notice of appeal was not affected by that order. The failure to file a timely appeal in this case is not attributable to court-related personnel.³ Therefore, the appeal must be dismissed.

¹ *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

² Del. Supr. Ct. R. 10(a).

³ See *Campbell v. State*, 2018 WL 500130 (Del. Jan. 19, 2018) (dismissing untimely appeal, where the appellant argued that three weeks elapsed before the prison law library notified him that the library did not have the forms to file an appeal and “two weeks passed before the Superior Court informed him that he had filed his notice of appeal in the wrong court and needed to file his notice of appeal in the Supreme Court”); *Coverdale v. State*, 2010 WL 2796541 (Del. July 15, 2010) (dismissing untimely appeal from violation-of-probation order, where the appellant argued that he

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

BY THE COURT:

/s/ Tamika R. Montgomery-Reeves
Justice

had timely filed the appeal in the Superior Court); *Johnson v. State*, 2006 WL 197180 (Del. Jan. 24, 2006) (holding that untimeliness of appeal was not attributable to court-related personnel where appellant argued that he had to wait several weeks before gaining access to the prison law library).