## IN THE SUPREME COURT OF THE STATE OF DELAWARE

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§ No. 407, 2021
§
§ Court Below: Superior Court
§ of the State of Delaware
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§ Cr. ID No. 1810008309 (K)
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Submitted: January 18, 2022 Decided: January 20, 2022

Before SEITZ, Chief Justice; VALIHURA and TRAYNOR, Justices.

## **ORDER**

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

(1) On December 21, 2021, the appellant, James Rochester, filed this appeal from a Superior Court order dated July 27, 2021 and docketed on July 28, 2021, which denied his motion for postconviction relief. A timely notice of appeal should have been filed by August 27, 2021. The Senior Court Clerk issued a notice

<sup>1</sup> See Del. Supr. Ct. R. 6(a)(iv) (providing that a notice of appeal must be filed "[w]ithin 30 days after entry upon the docket of a judgment or order in any proceeding for post-conviction relief").

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directing Rochester to show cause why this appeal should not be dismissed as untimely filed under Supreme Court Rule 6.

(2) In response to the notice to show cause, Rochester states that he did not

receive a copy of the order and did not learn that the Superior Court had decided the

postconviction motion until he requested a docket sheet on December 10, 2021, and

received the docket sheet on December 16, 2021. Prison records confirm that

Rochester did not receive any mail from the Superior Court between July 27, 2021,

and December 16, 2021. In light of the evidence supporting Rochester's claim that

he did not receive the July 27, 2021 order in a timely manner, the State suggests that

this Court remand the matter with directions to the Superior Court to reissue the

order so that Rochester has an opportunity to file a timely notice of appeal.

(3) We agree that the proper course of action is to remand this matter to the

Superior Court.<sup>2</sup> Upon remand, the Superior Court shall reissue the July 2021 order.

NOW, THEREFORE, IT IS ORDERED, that the matter is REMANDED to

the Superior Court for further action in accordance with this order. Jurisdiction is

not retained.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

<sup>2</sup> Perkins v. State, 2020 WL 7072659 (Del. Dec. 2, 2020).

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