

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL DURHAM,	§
	§ No. 283, 2022
Defendant Below,	§
Appellant,	§
	§ Court Below–Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§
	§ Cr. ID No. 0208019524A (K)
Appellee.	§

Submitted: August 29, 2022
Decided: September 8, 2022

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

ORDER

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

(1) On August 10, 2022, the appellant, Michael Durham, filed a notice of appeal from the Superior Court’s July 6, 2022 order denying his third motion for postconviction relief. A timely notice of appeal was due on or before August 5, 2022.¹ The Senior Court Clerk issued a notice directing Durham to show cause why this appeal should not be dismissed as untimely filed under Supreme Court Rule 6.

¹ See Del. Supr. Ct. R. 6(a)(iv) (providing that a notice of appeal must be filed “[w]ithin 30 after entry upon the docket of a judgment or order in any proceeding for postconviction relief”).

(2) In his response to the notice to show cause, Durham claims that the Superior Court initially mailed the July 6, 2022 order to a post office box in Las Vegas, Nevada—not to the James T. Vaughn Correctional Center (JTVCC) in Smyrna, Delaware, where Durham is incarcerated. Durham further alleges that he did not receive a copy of the order until July 20, 2022. To support his claims, Durham (i) attaches a copy of an envelope from the Superior Court Judges’ Chambers, postmarked July 8, 2022, and addressed to Durham in “Las Vegas, NV 89119,” and (ii) refers the Court to the exhibit attached to his notice of appeal—a copy of an envelope from the Superior Court Judges’ Chambers, addressed to Durham at JTVCC, postmarked July 15, 2022, and marked “received” by the JTVCC mailroom on July 20, 2022.

(3) At the request of the Court, the State also filed a response to the notice to show cause. The State concedes that (i) the envelopes submitted by Durham support a finding that the Superior Court’s order was initially mailed to Nevada and Durham did not receive a copy of the order until July 20, 2022 and (ii) the mailing delay appears to be attributable to court-related personnel. The State therefore does not object to remanding this matter to the Superior Court with instructions to re-issue the July 6, 2022 order to allow Durham to file a timely notice of appeal.

(4) We conclude that Durham’s failure to file a timely notice of appeal is at least partially attributable to court personnel and that the proper course of action

is to remand this matter to the Superior Court. Upon remand, the Superior Court shall re-issue its July 6, 2022 order.

NOW, THEREFORE, IT IS HEREBY ORDERED that this 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