

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEROY FLEMING,	§
	§
Defendant Below,	§ No. 144, 2024
Appellant,	§
	§ Court Below: Superior Court
v.	§ of the State of Delaware
	§
STATE OF DELAWARE,	§ Cr. I.D. No. 2209010479 (K)
	§
Appellee.	§

Submitted: May 15, 2024
Decided: May 24, 2024

Before **TRAYNOR, LEGROW, and GRIFFITHS**, Justices.

ORDER

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

(1) On February 28, 2024, the appellant, Leroy Fleming, pleaded guilty to possession of a firearm during commission of a felony, and the Superior Court sentenced him that same day. On April 8, 2024, Fleming filed this appeal. Under Supreme Court Rules 6(a)(iii) and 11, a timely notice of appeal would have been filed on or before April 1, 2024.

(2) The Senior Court Clerk issued a notice directing Fleming to show cause why the appeal should not be dismissed as untimely filed. In response to the notice

to show cause, Fleming states that he is not educated in the law, has limited access to the law library, and was unaware of the filing deadline.

(3) The appellate jurisdiction of this Court rests upon perfecting an appeal within the applicable time period.¹ A notice of appeal must be received by the Court within the applicable time period to be effective.² An appellant's self-represented, incarcerated status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6.³ An untimely appeal cannot be considered unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel.⁴

(4) Fleming does not contend that the untimeliness of this appeal is attributable to court-related personnel. He also does not indicate that he told his counsel that he desired to appeal.⁵ In any event, the "jurisdictional defect created by the untimely filing of a notice of appeal cannot be excused in the absence of unusual circumstances which are not attributable to the appellant or the appellant's

¹ *Heller v. State*, 147 A.3d 749, 2016 WL 4699158, at *1 (Del. Sept. 7, 2016) (TABLE) (citing *Carr v. State*, 554 A.2d 778, 779 (Del. 1989)).

² Supr. Ct. R. 10(a).

³ *E.g.*, *Harrison v. State*, 307 A.3d 327, 2023 WL 6854781, at *1 (Del. Oct. 17, 2023) (TABLE); *see also Smith v. State*, 47 A.3d 481, 481–82 (Del. 2012) (dismissing prisoner's *pro se* direct appeal, filed one day late, as untimely).

⁴ *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

⁵ *See* Supr. Ct. R. 26(a)(ii) (requiring criminal defense counsel to docket a direct appeal if "the client desires to appeal, whether or not the appeal appears meritorious"); *see also Heller*, 2016 WL 4699158 (dismissing untimely direct appeal despite the appellant's assertion in response to the notice to show cause that counsel had told him immediately after sentencing that counsel would file a notice of appeal).

attorney.”⁶ Because the untimeliness of this appeal is not attributable to court-related personnel, the appeal must be dismissed.⁷

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

BY THE COURT:

/s/ Abigail M. LeGrow
Justice

⁶ *Dixon v. State*, 223 A.3d 883, 2019 WL 6769679, at *1 (Del. Dec. 11, 2019) (TABLE) (quotations omitted).

⁷ *Harrison*, 2023 WL 6854781, at *1.