

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KELLY CHURCHILL,	§	
	§	
Defendant Below-	§	No. 546, 2004
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for Kent County
STATE OF DELAWARE,	§	Cr. A. No. IK01-07-0161 R1
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: January 11, 2005
Decided: February 10, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 10th day of February 2005, it appears to the Court that:

(1) On December 14, 2004, the Court received the appellant's notice of appeal from the Superior Court's October 5, 2004 order denying his request to expand the record and the Superior Court's October 29, 2004 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. Pursuant to Supreme Court Rule 6, a timely notice of appeal from the October 29, 2004 order should have been filed on or before November 29, 2004.

(2) On December 14, 2004, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing the appellant to show cause why the appeal should not be dismissed as untimely filed. The appellant filed his response to the notice to

show cause on January 3, 2005. The appellant states that he received the Superior Court's order on November 22, 2004 and was not aware there was a problem until he received the notice to show cause from the Clerk. Pursuant to Supreme Court Rule 6(a) (iii), a notice of appeal must be filed within 30 days after entry upon the docket of the judgment or order being appealed.

(3) Time is a jurisdictional requirement.¹ A notice of appeal must be received by the Office of the Clerk of this Court within the applicable time period in order to be effective.² An appellant's pro se status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6.³ Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal can not be considered.⁴

(4) There is nothing in the record that reflects that appellant's failure to file a timely notice of appeal in this case is attributable to court-related personnel. While the appellant did not receive the Superior Court order until November 22, 2004, he does not explain why he was not able to file his appeal within the applicable time period. Consequently, this case does not fall within the exception

¹ *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

² Supr. Ct. R. 10(a).

³ *Carr v. State*, 554 A.2d at 779.

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

to the general rule that mandates the timely filing of a notice of appeal. Thus, the Court concludes that the within appeal must be dismissed.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

Churchill v. State, No. 546, 2004.

CHURCHILL:

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