

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS FEDORKOWICZ,	§
	§ No. 583, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0712006403
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 22, 2008

Decided: January 23, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 23rd day of January 2009, upon consideration of the State of Delaware's request for remand, it appears to the Court that:

(1) In June 2008, the defendant-appellant, Thomas Fedorkowicz, was convicted in a Superior Court bench trial of Robbery in the First Degree, Assault in the First Degree, and Conspiracy in the Second Degree. Fedorkowicz was sentenced on August 8, 2008. Any appeal from his convictions and sentences should have been filed on or before September 8,

2008.¹ However, Fedorkowicz did not file his pro se appeal in this Court until November 25, 2008.²

(2) On November 26, 2008, the Clerk issued a notice to Fedorkowicz to show cause why his appeal should not be dismissed as untimely filed. Fedorkowicz filed a response to the notice to show cause on December 10, 2008. In the response, he states that his trial attorney failed to file a timely notice of appeal.

(3) The Court requested the State to reply to Fedorkowicz's response to the notice to show cause. In its reply, the State urges that, in these circumstances, the matter should be remanded to the Superior Court for a determination of whether Fedorkowicz instructed his attorney to file an appeal.³ If the Superior Court determines that Fedorkowicz instructed his attorney to file an appeal, then its August 8, 2008 sentencing order should be vacated and Fedorkowicz re-sentenced, with the assistance of counsel, so that a timely appeal may be filed.⁴

(4) In the interest of justice, we conclude that this matter should be remanded to the Superior Court for an evidentiary hearing and further proceedings in accordance with this Order.

¹ Supr. Ct. R. 6(a)(ii).

² The record reflects that he erroneously attempted to file a pro se appeal in the Superior Court on September 3, 2008.

³ *Roe v. Flores-Ortega*, 528 U.S. 470, 485 (2000).

⁴ *Id.* at 478.

NOW, THEREFORE, IT IS ORDERED that this matter is hereby REMANDED to the Superior Court for further proceedings in accordance herewith. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs
Justice