

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARSON I. GIBBS, SR.,	§
	§
Plaintiff Below-	§ No. 719, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
DAVID LEE MORRIS and ALICE	§ in and for New Castle County
M. SYMONDS,	§ C.A. No. JP9-10-000357
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 29, 2010

Decided: January 27, 2011

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

ORDER

This 27th day of January 2011, upon consideration of the notice to show cause and the appellant's response thereto, it appears to the Court that:

(1) On November 15, 2010, the Court received appellant Arson Gibbs' notice of appeal from a Superior Court form document rejecting a notice of appeal he attempted to file in that court. Gibbs had attempted to appeal to the Superior Court from a Justice of the Peace Court decision. A clerk in the Superior Court Prothonotary's office refused to accept Gibbs' notice of appeal for filing, advising him that his notice of appeal should be filed in the Court of Common Pleas.

(2) The Clerk of this Court issued a notice pursuant to Supreme Court Rule 29(b) directing Gibbs to show cause why his present appeal should not be dismissed for this Court's lack of jurisdiction to consider an appeal from a letter decision of a nonjudicial court employee. Appellant filed a response to the notice to show cause and a supplement thereto on November 22, 2010 and November 29, 2010, respectively. Gibbs asserts that the final order of the Justice of the Peace Court was entered on September 28, 2010 but that it was not provided to him until October 14, 2010, beyond the fifteen day period in which Gibbs was required to file an appeal with the Court of Common Pleas. Gibbs asserts that because he lost his right to appeal to the Court of Common Pleas due to the actions of court personnel, he filed his notice of appeal with the Superior Court to review the matter. Gibbs asserts that the clerk of the Superior Court had no authority to reject his notice of appeal for filing. He argues that the actions of court personnel are foreclosing his access to the court system and denying him due process.¹

(3) We agree with Gibbs' assertion that the Superior Court clerk erred in refusing to accept his notice of appeal for filing in that court. We reiterate our recent holding that "[i]t is not the function of the 'clerk of a

¹See *Lecates v. J.P. Court No. 4*, 637 F.2d 898, 909 (3d Cir. 1980).

court to pass on the sufficiency of a notice of appeal which is tendered to [the clerk] for filing.”² Ultimately, whether a notice of appeal is legally sufficient to invoke a court’s jurisdiction is a question of law to be determined by a judge after notice to the appellant and an opportunity to be heard.³

(4) Nonetheless, we conclude that the Superior Court clerk’s error in this matter was harmless because it is manifest that the Superior Court had no jurisdiction to hear an appeal from the Justice of the Peace Court. To the extent Gibbs argues that he was precluded from filing a timely notice of appeal from the Justice of the Peace Court to the Court of Common Pleas because of court personnel,⁴ only the Court of Common Pleas had jurisdiction to consider such an argument.⁵ Gibbs’ response to the notice to show cause reflects that he made a conscious, but erroneous, decision to forgo filing his notice of appeal in the Court of Common Pleas in favor of filing his notice of appeal in the Superior Court. Appellant’s pro se status does not excuse his failure to comply with statutory law and court rules.

²*Kostyshyn v. State*, 2010 WL 3398943 (Del.Aug. 30, 2010) (quoting *Graves v. General Insur. Corp.*, 381 F.2d 517, 519 (10th Cir. 1967)).

³ *United States v. Neal*, 774 F.2d 1022, 1023 (10th Cir. 1985).

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

⁵ Del. Code. Ann. tit. 10, § 9571 (1999).

Furthermore, without the interposition of a judge of the Superior Court, this Court has no jurisdiction to review the actions of a Superior Court clerk.⁶

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

BY THE COURT:

/s/ Randy J. Holland
Justice

⁶ See *Redden v. McGill*, 549 A.2d 695, 697 (Del. 1988).