

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REESE DANIEL HEESH,

Defendant Below,  
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,  
Appellee.

No. 537, 2005

Court Below: Superior Court of  
the State of Delaware in and for  
Sussex County

Cr. ID No. 0306020269

Submitted: November 4, 2005

Decided: January 9, 2006

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

**ORDER**

This 9<sup>th</sup> day of January 2006, upon consideration of the appellant's response to the notice to show cause, it appears to the Court that:

(1) The appellant, Reese Daniel Heesh, filed a notice of appeal on October 31, 2005, from a Superior Court order that was docketed on September 27, 2005.<sup>1</sup> The Clerk of this Court issued a notice to Heesh to show cause why the appeal should not be dismissed for his failure to file the notice of appeal

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<sup>1</sup> The Superior Court order denied Heesh's motion for reduction or modification of sentence and reinstated a no-contact order. *State v. Heesh*, Del. Super., Cr. ID No. 0306020269, Bradley, J. (Sept. 26, 2005).

within thirty days after entry upon the docket of the Superior Court's order.<sup>2</sup>

Heesh filed a response to the notice to show cause on November 4, 2005.

(2) In his response to the notice to show cause, Heesh contends that he filed the appeal on October 17, 2005, the date that he signed and dated the notice of appeal.<sup>3</sup> A notice of appeal is not considered "filed," however, "until the paper has been received in the office of the Clerk."<sup>4</sup> In this case, the Supreme Court did not receive Heesh's notice of appeal until October 31, 2005, *i.e.*, thirty-four days after September 27, 2005, the docketing date of the Superior Court the order that Heesh sought to appeal.

(3) This Court lacks jurisdiction to consider an appeal when the notice of appeal is not filed in a timely manner *unless* the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel.<sup>5</sup> In this case, Heesh has not demonstrated that the untimely filing of his notice of appeal is attributable to court-related personnel. Accordingly, the Court has no jurisdiction to hear his appeal.

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<sup>2</sup>Del. Code Ann. tit. 10, § 147 (1999); Del. Supr. Ct. R. 6(a)(iii) (2005).

<sup>3</sup> Presumably, Heesh is contending that he filed the appeal on the date that he placed the notice of appeal in the prison mail system.

<sup>4</sup>Del. Code Ann. tit. 10, § 147 (1999); Del. Supr. Ct. R. 10(a) (2005).

<sup>5</sup> *Graham v. State*, 2004 WL 2154298 (Del. Supr.) (citing *Bey v. State*, 402 A.2d 362, 363 (Del. 1979)).

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 6 and 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger  
Justice