

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL STATEN,	§
	§ No. 707, 2009
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. 0508018142
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 7, 2010
Decided: January 15, 2010

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

ORDER

This 15th day of January 2010, it appears to the Court that:

(1) In March 2006, the defendant-appellant, Michael Staten, pleaded guilty to Maintaining a Building for Keeping Controlled Substances and Conspiracy. On the first conviction, he was sentenced to 2 years incarceration at Level V. On the second conviction, he was sentenced to 2 years incarceration at Level V, to be suspended after 1 year for 18 months at Level III probation. In November 2008, Staten was found to have committed a violation of probation (“VOP”). He was sentenced on

November 19, 2008.¹ Any appeal from Staten's VOP sentence should have been filed on or before December 19, 2008.² However, Staten did not file his appeal in this Court until December 7, 2009.

(2) On December 8, 2009, the Clerk issued a notice to Staten to show cause why his appeal should not be dismissed as untimely filed. Staten filed a response to the notice to show cause on December 15, 2009. In the response, he states that he was not informed of his right to appeal his VOP sentence by his attorney. In his reply, Staten's counsel states that he does not recall if he advised Staten of his right to file an appeal from his VOP sentence. In its reply, the State argues that Staten's appeal is now moot because he has been sentenced for two subsequent VOP's, one of which he has appealed to this Court. The State urges this Court to dismiss the instant appeal as untimely.

(3) Having carefully reviewed the parties' submissions, and given the lack of clarity in the record before us, we conclude that this matter must be remanded to the Superior Court for further proceedings to determine whether Staten's attorney informed him of his right to appeal his VOP

¹ The Superior Court docket reflects that the sentencing order was signed and filed on January 2, 2009.

² Alternatively, Staten's appeal was due on or before February 2, 2009. Supr. Ct. R. 6(a)(ii).

sentence³ and, if not, whether Staten should be re-sentenced in order to allow him to file a timely appeal.⁴

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:


Justice

³ *Harris v. State*, Del. Supr., No. 451, 2006, Holland, J. (July 5, 2007) (“Although Supreme Court Rule 26 does not explicitly impose a continuing obligation on court-appointed counsel in VOP proceedings to represent the client on appeal, . . . counsel, at a minimum, has an ethical duty to inform the client of the right to appeal. . . .”); Del. Lawyers’ R. Prof. Cond. 1.2(c), 1.3 cmt. 4 (2007).

⁴ The Superior Court also should consider the possible impact of Staten’s additional VOP’s.