

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHESTER A. WOULARD,

Defendant Below,
Appellant,

v.

RAPHAEL WILLIAMS,
WARDEN, MPCJF, and M. JANE
BRADY, ATTORNEY GENERAL
OF THE STATE OF DELAWARE,

Plaintiff Below,
Appellee.

No. 217, 2000

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

C.A. No. 99M-06-044

Submitted: June 13, 2000

Decided: July 13, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices.

ORDER

This 13th day of July 2000, it appears to the Court that:

(1) On May 8, 2000, the Court received the appellant, Chester L. Woulard's, notice of appeal from a Superior Court order dated September 22, 1999. Pursuant to Supreme Court Rule 6, a timely notice of appeal from a September 22, 1999, order should have been filed on or before October 22, 1999.

(2) On May 9, 2000, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing Woulard to show cause why the appeal should not be

dismissed as untimely filed. Woulard filed his response to the notice to show cause on June 5, 2000. In his response, Woulard explains that he did not receive the Superior Court's September 22, 1999, order until March 30, 2000, because he was in federal custody. He further states that as soon as he received the Superior Court's order he filed a timely appeal on April 14, 2000. Woulard's notice of appeal was received in the Supreme Court Clerk's Office on May 8, 2000. Even if Woulard's claimed date of March 30, 2000, could be used as the date from which an appeal could be taken, May 8, 2000, was still past the 30-day time for appeal from March 30, 2000.

(3) On June 13, 2000, the State, at the Court's request,* filed a Statement in Response to Answer to Notice to Show Cause. In that Statement, the State contends that Woulard was in the State of Delaware when the Superior Court's September 22, 1999, order was issued, and further, that Woulard was in the State for two more weeks after that order was issued. The State also points out that Woulard's own documents show that he had notice of the September 1999 order before March 2000. In its November 17, 1999 order, sent to Woulard in federal prison, Superior Court points out that all of Woulard's prior petitions had

* On June 21, 2000, Woulard filed a reply to the the State's response. Pursuant to Supreme Court Rule 29(b), Woulard had an opportunity to respond to the Court's Rule to Show Cause. Further filings are not permitted under that Rule unless requested by the Court. The Court did not request a reply to the State's response, and Woulard did not request permission to file a reply. Accordingly, Woulard's reply has been stricken as a nonconforming document. Supr. Ct. R. 34.

been dismissed. That is enough to charge Woulard with the knowledge that there had been a decision in the case. *See In re 1989 GMC Sierra Pick-Up Truck*, Del. Supr., No. 186, 1998 (Veasey, C.J.) (June 11, 1998) (Order).

(4) Time is a jurisdictional requirement. *Carr v. State*, Del. Supr., 554 A.2d 778, 779, *cert. denied*, 493 U.S. 829 (1989). 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. Supr. Ct. R. 10(a). An appellant's *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6. *Carr v. State*, 554 A.2d at 779. Unless Woulard can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered. *Bey v. State*, Del. Supr., 402 A.2d 362, 363 (1979).

(5) There is nothing in the record that reflects that Woulard's failure to file a timely notice of appeal in this case is attributable to court-related personnel. Consequently, this case does not fall within the exception 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, pursuant to Supreme Court Rule 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/E. Norman Veasey
Chief Justice