

SUPREME COURT OF THE STATE OF DELAWARE

Kane v. State

Kane v. State · No. No. 331, 2015 · Decided July 21, 2015

SUMMARY

The Delaware Supreme Court dismissed Thomas Kane’s appeal as untimely because the notice of appeal was filed after the jurisdictional deadline. The Court held that defense counsel is not court personnel for purposes of the exception to the filing deadline and stated that any ineffective-assistance claim must be pursued through postconviction relief under Superior Court Criminal Rule 61.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Collins J. Seitz, Jr.; Leo E. Strine, Jr., Chief Justice; James T. Vaughn, Jr., Justice; Gary F. Seitz, Jr., Justice
JURISDICTION	Delaware
DECIDED	July 21, 2015
DOCKET	No. 331, 2015
DISPOSITION	dismissed
PROCEDURAL POSTURE	Kane filed a pro se appeal from a Superior Court sentencing order after a jury trial. The Delaware Supreme Court issued a rule to show cause why the appeal should not be dismissed as untimely and dismissed the appeal under Supreme Court Rule 29(b).
STANDARD OF REVIEW	Strict compliance with the jurisdictional time requirement for filing a notice of appeal; the court treated timeliness as a jurisdictional question.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order
PARTIES	Thomas Kane v. State of Delaware

TOPICS

- appellate jurisdiction
- appellate procedure
- post-conviction relief
- criminal procedure

PRACTICE AREAS

- appellate procedure
- criminal procedure
- post-conviction relief

QUESTIONS PRESENTED

1. Whether the Delaware Supreme Court had jurisdiction to consider a notice of appeal filed after the applicable 30-day deadline.
2. Whether the alleged failure of trial counsel to file a notice of appeal qualified for the exception applicable when untimeliness is attributable to court personnel.
3. Whether Kane's alleged ineffective-assistance claim could be pursued in the direct appeal.

HOLDINGS

1. A notice of appeal must be received by the Office of the Clerk within the applicable time period, and failure to comply with the jurisdictional deadline requires dismissal unless the untimeliness is attributable to court personnel.
2. Defense counsel is not court personnel; therefore, an alleged failure by defense counsel to file a timely notice of appeal does not bring the case within the court-personnel exception to the jurisdictional filing deadline.
3. An ineffective-assistance claim concerning trial counsel must be pursued through a motion for postconviction relief under Superior Court Criminal Rule 61 rather than through the untimely direct appeal.

KEY QUOTATIONS

“Time is a jurisdictional requirement.” (at 2)

“An appellant’s pro se status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6.” (at 2)

“Defense counsel is not court personnel.” (at 3)

FACTUAL BACKGROUND

Kane was sentenced on multiple criminal charges following a jury trial. His sentencing order was dated March 20, 2015, making April 20, 2015 the deadline for a timely notice of appeal, but the Clerk received his pro se notice on June 26, 2015. Kane asserted that he learned only in June that trial counsel was obligated to file the appeal, while counsel stated that he had told Kane he had 30 days to appeal and had received no instruction to file.

PROCEDURAL HISTORY

The Superior Court sentenced Kane on multiple criminal charges in an order dated March 20, 2015. The deadline for filing a notice of appeal was April 20, 2015, but Kane filed his notice on June 26, 2015. After receiving responses from Kane, trial counsel, and the State concerning the untimeliness, the Supreme Court dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- Carr v. State, 554 A.2d 778, 779 (Del.), cert. denied, 493 U.S. 829 (1989)
- Smith v. State, 47 A.3d 481, 486-87 (Del. 2012)
- Bey v. State, 402 A.2d 362, 363 (Del. 1979)
- Chrichlow v. State, 2009 WL 2027250 (Del. July 14, 2009)

OPINION

Kane v. State

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS KANE, §

§ Defendant Below- § No. 331, 2015 Appellant, § § v. § Court Below—Superior Court § of the State of Delaware, STATE OF DELAWARE, § in and for New Castle County § Cr. ID No. 1404017339 Plaintiff Below- § Appellee. § Submitted: July 15, 2015 Decided: July 21, 2015 Before STRINE, Chief Justice; VAUGHN, and SEITZ, Justices.

ORDER

This 21st day of July 2015, it appears to the Court that:

(1) On June 26, 2015, the Court received appellant Thomas Kane's pro se notice of appeal from a Superior Court sentencing order, dated March 20, 2015, which sentenced him on multiple criminal charges following a jury trial. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before April 20, 2015.

(2) The Clerk issued a notice under Supreme Court Rule 29(b) directing Kane to show cause why the appeal should not be dismissed as untimely filed.¹ Kane filed a response to the notice to show cause on July 9, 2015. He asserts that his appeal should not be dismissed because he only became aware in June that his trial counsel was obligated to file the appeal on his behalf, and his counsel did not do so.

(3) The Court directed Kane's trial counsel to file a response.

Among other things, counsel indicates that he informed Kane that he had 30 days to appeal and that Kane needed to inform counsel before the expiration of 30 days if he wanted counsel to file an appeal. Counsel did not receive any communication from Kane indicating that an appeal should be filed. The State filed a reply to counsel's response, asserting that the appeal must be dismissed because it was not filed within 30 days and because Kane's untimely filing is not attributable to court personnel.

(4) The State's position is correct. Time is a jurisdictional requirement. ² 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.³ An appellant's pro se status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6.⁴ 1 Del. Supr. Ct. R. 6(a)(ii). 2 Carr v. State, 554 A.2d 778, 779 (Del.), cert. denied, 493 U.S. 829 (1989). 3 Del. Supr. Ct. R. 10(a). 4 Smith v. State, 47 A.3d 481, 486-87 (Del. 2012). -2- Unless an appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court personnel, the appeal cannot be considered. 5

(5) Defense counsel is not court personnel.⁶ Consequently, even assuming that Kane timely informed defense counsel of his wish to appeal following trial (which defense counsel disputes), this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal. To the extent Kane asserts ineffective assistance of trial counsel, such a claim must be pursued through a motion for postconviction relief under Superior Court Criminal Rule 61. 7 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/ Collins J. Seitz, Jr. Justice 5 Bey v. State, 402 A.2d 362, 363 (Del. 1979). 6 Chrichlow v. State, 2009 WL 2027250 (Del. July 14, 2009). 7 Id. -3-