

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FREDERICK W. SMITH, JR.,	§
	§
Petitioner Below-	§ No. 127, 2017
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
JAMES T. VAUGHN CORRECTIONAL	§
CENTER EDUCATION	§ C.A. No. N17C-02-209
DEPARTMENT,	§
	§
Respondent Below-	§
Appellee.	§

Submitted: May 25, 2017

Decided: June 15, 2017

Before **STRINE**, Chief Justice; **VALIHURA** and **VAUGHN**, Justices.

**ORDER**

This 15<sup>th</sup> day of June 2017, it appears to the Court that:

(1) The appellant, Frederick T. Smith, filed this appeal from a Superior Court order dismissing his complaint for failure to state a claim and denying his motion to proceed *in forma pauperis*. On May 2, 2017, the Superior Court informed the Clerk of this Court that Smith had failed to pay the required record preparation fee. The Senior Court Clerk directed Smith to pay the fee by May 17, 2017 or else a notice to show cause would be issued.

(2) Smith failed to pay the fee. On May 18, 2017, the Chief Deputy Clerk issued a notice to Smith to show cause why his appeal should not be dismissed for his failure to diligently prosecute the appeal by failing to pay the Superior Court's record preparation fee.

(3) Smith responded to the rule to show cause on May 25, 2017. He argues that the Superior Court has no jurisdiction to demand payment from him while his case is pending appeal.

(4) Smith is incorrect. Under Supreme Court Rule 9(aa), "[e]very appellant is required to pay the record preparation and transmittal fee within the time limit imposed by the trial court unless the trial court waives its fee...."<sup>1</sup> If the appellant fails to pay the record preparation fee, this Court may dismiss the appeal.<sup>2</sup> The Superior Court did not waive the fee, and Smith failed to pay it. The Court cannot proceed without the record on appeal.

NOW, THEREFORE, IT IS ORDERED that the within appeal is DISMISSED for Smith's failure to prosecute.

BY THE COURT:

/s/ Karen L. Valihura  
Justice

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<sup>1</sup> Del. Supr. Ct. R. 9(aa).

<sup>2</sup> *Id.*