

SUPREME COURT OF ILLINOIS

OPINION LIST

Springfield, Illinois, June 4, 2004

Opinions have this day been filed in the following cases:

- No. 95285 - People State of Illinois, appellant, v. Avell A. Walker, appellee. Appeal, Appellate Court, Second District.  
Appellate court judgment affirmed.
- No. 96153 - James E. Hawes, appellee, v. Luhr Brothers, Inc., appellant. Appeal, Appellate Court, Fifth District.  
Appeal dismissed.
- No. 96367 - People State of Illinois, appellant, v. Gerald Scott Huddleston, appellee. Appeal, Circuit Court (Livingston).  
Reversed and remanded.

SUPREME COURT OF ILLINOIS

FRIDAY, JUNE 4, 2004

A SUPERVISORY ORDER WAS ENTERED IN THE FOLLOWING CASE ON THE  
LEAVE TO APPEAL DOCKET:

No. 97526 - Jose Luis Casimiro et al., respondents, v.  
Inocencio Arceo, petitioner. Leave to appeal,  
Appellate Court, Second District. (2-03-0056)  
Petition for leave to appeal denied.

In the exercise of this Court's supervisory  
authority, the Appellate Court, Second  
District, is directed to vacate its judgment  
in Casimiro v. Arceo, case No. 2-03-0056,  
dismissing the appeal. The appellate court  
is further directed to permit the late filing  
of appellant's brief and, after briefing, to  
consider the merits of the appeal.

Thomas, J., joined by Fitzgerald and Garman,  
JJ., dissenting. Dissent attached.

Docket No. 97526

JOSE LUIS CASIMIRO *et al.*, Respondents, v. INOCENCIO  
ARCEO, Petitioner.

JUSTICE THOMAS, dissenting:

The issuing of a supervisory order in this case is wholly inappropriate for two reasons.

First, the appellant's failure either to comply with the appellate court's final extension order or to seek a modification thereof justifies the dismissal of this appeal. Indeed, when it became clear that compliance with the appellate court's second and final extension order would not be possible, the appellant did not file a motion with the appellate court seeking an additional extension or in any way notify the appellate court that timely compliance would not be possible. Instead, the appellant simply proceeded on its own schedule, expecting the appellate court to accept the brief for filing on the appellant's—rather than the court's—timeline. I simply cannot agree with my colleagues' conclusion that the appellate court abused its discretion in refusing to accept a brief that was submitted for filing almost two weeks after the expiration of a second and final extension of time, without any prior notice having been given to the court concerning the appellant's inability to comply. The issue in this case is not whether the appellant had a good excuse; rather, the issue is who has the power to control the appellate court's docketing schedule—the appellate court or the litigants.

Second, the dismissal of an appeal for the failure to file a timely brief is a matter for the appellate court's discretion. See 155 Ill. 2d R. 343. The dismissal of the appeal in this case was not an arbitrary exercise—indeed, the dismissal became final only after the appellate court entertained full briefing on appellant's motion to reconsider. By issuing today's supervisory order, we are sending the following message to the appellate court: The enforcement of a second and final court-ordered filing deadline, two weeks after the expiration of that deadline and in the absence of a timely-filed motion for extension of time, is an abuse of discretion so severe as to justify summary reversal by this court. In other words, today's order tells the appellate court that its docketing orders are not worth the paper they are printed on and that litigants—rather than the court—ultimately control the court's docket.

The appellate court did absolutely nothing wrong in this case, and I strongly oppose the issuing of today's order.

JUSTICES FITZGERALD and GARMAN join in this dissent.

**FILED**

JUN 4 - 2004

SUPREME COURT CLERK