

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY RANDALL STALLINGS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43100

FILED

JUN 25 2004

ORDER DISMISSING APPEAL

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rutad*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant's motion to modify sentence. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's motion on February 25, 2004. Appellant's notice of appeal was due on March 26, 2004.¹ Appellant's notice of appeal, however, was not filed in the district court until March 31, 2004, five days beyond the relevant appeal period. An untimely notice of appeal fails to vest jurisdiction in this court.²

Appellant signed his notice of appeal on March 24, 2004. Because a notice of appeal properly delivered to prison officials in a timely fashion is sufficient to invoke this court's jurisdiction, this court directed the attorney general to obtain and transmit to this court a copy of any


¹NRAP 4(b)(1) ("In a criminal case, the notice of appeal shall be filed in the district court within thirty (30) days after the entry of the judgment or order appealed from."); see also Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

²Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

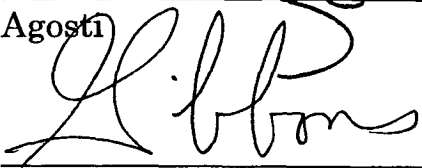
documents in the prison indicating the date upon which appellant delivered his notice of appeal to prison officials.³ The attorney general filed a timely response to this court's May 6, 2004 order. The attorney general indicates that appellant did not use either the notice of appeal log or the outgoing legal mail log during the period in question.

This court's decision in Kellogg contemplates that the date of delivery of the notice of appeal to a prison official will be determined by the date recorded in the prison mail log.⁴ Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to Kellogg. Therefore, the March 31, 2004 filing date of the notice of appeal in the district court controls. Because appellant's notice of appeal was untimely filed, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

³See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992).

⁴Id. at 476-77, 835 P.2d at 13.

cc: Hon. Michelle Leavitt, District Judge
Gary Randall Stallings
Attorney General Brian Sandoval/Las Vegas
Clark County District Attorney David J. Roger
Clark County Clerk