

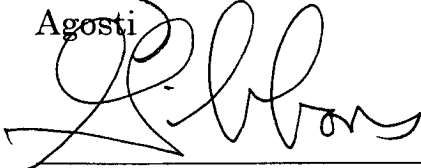


prior to the expiration of the thirty-day appeal period. An untimely notice of appeal fails to vest jurisdiction in this court.² Accordingly, we

ORDER this appeal DISMISSED.³


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Emerson & Manke, LLP
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk
Matthew S. Laycock

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

³On August 31, 2004, this court received a proper person motion to dismiss this appeal voluntarily. The motion is denied as moot.

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW S. LAYCOCK A/K/A
MATTHEW SCOTT LAYCOCK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43748

FILED

OCT 19 2004

ORDER DISMISSING APPEAL

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

The judgment of conviction was entered by the district court on June 23, 2004. The notice of appeal was filed on August 2, 2004, after the thirty-day appeal period prescribed by NRAP 4(b). Because it appeared possible that the notice of appeal was delivered to prison officials within the thirty (30) day period, and might therefore be timely, this court ordered appellant's counsel to show cause why this appeal should not be dismissed.¹

On September 20, 2004, counsel for appellant filed a response to this court's order to show cause. In the response, counsel states that he has received an affidavit from the Custodian of Records at the prison, and that there are no documents in the custody of prison officials showing that appellant submitted his notice of appeal to a prison official for mailing

¹Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (notice of appeal shall be deemed filed on the date it is delivered to a prison official).