

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK DOUGLAS DOOLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43790

FILED

OCT 19 2004

ORDER DISMISSING APPEAL

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of assault on an officer, school employee, taxicab driver or transit operator with use of a deadly weapon. Third Judicial District Court, Churchill County; David A. Huff, Judge.

The judgment was entered by the district court on July 13, 2004. The notice of appeal was filed on August 16, 2004, after the thirty-day appeal period prescribed by NRAP 4(b).¹ An untimely notice of appeal fails to vest jurisdiction in this court.² Because appellant dated the notice of appeal before the expiration of the appeal period, it appeared possible that the notice of appeal was delivered to prison officials within the thirty (30) day period, and might therefore be timely.

Accordingly, on August 27, 2004, this court ordered appellant's counsel to investigate on behalf of appellant whether any documents in the custody of prison officials, such as a prison log, would verify whether appellant submitted his notice of appeal to a prison official for mailing

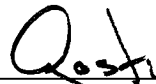
¹See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (notice of appeal shall be deemed filed on the date it is delivered to a prison official).


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

prior to the expiration of the thirty-day appeal period. On September 27, 2004, counsel filed a response in which he informs this court that there is no entry in the prison log for appellant's notice of appeal. We conclude that the notice of appeal was untimely. We therefore conclude that we lack jurisdiction to entertain this appeal and we

ORDER this appeal DISMISSED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. David A. Huff, District Judge
Law Offices of Robert Witek
Attorney General Brian Sandoval/Carson City
Churchill County District Attorney
Churchill County Clerk