

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KEITH WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43798

FILED

SEP 15 2004

ORDER DISMISSING APPEAL

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

This is a proper person appeal from an order of the district court denying a motion to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

This court's preliminary review of this appeal reveals a jurisdictional defect. Specifically, the district court entered the order denying appellant's motion on November 24, 2003. Appellant did not file the notice of appeal, however, until August 13, 2004, well after the expiration of the thirty-day appeal period prescribed by NRAP 4(b).¹ An untimely notice of appeal fails to vest jurisdiction in this court.² The notice of entry of order entered on August 4, 2004, is of no effect. An appeal from an order denying a motion to withdraw a guilty plea must be filed within thirty days after entry of the order; notice of entry of the order is not required and the failure to serve notice of entry of the order does not

¹We note that this is appellant's second untimely notice of appeal from the district court's November 24, 2003 order. The first untimely appeal was dismissed by this court for lack of jurisdiction. Wilson v. State, Docket No. 42739 (Order Dismissing Appeal, March 18, 2004).

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

toll the time for filing a timely notice of appeal.³ Accordingly, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Brian Keith Wilson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³See NRAP 4(b) ("In a criminal case, the notice of appeal by a defendant shall be filed in the district court within thirty (30) days after the entry of the judgment or order appealed from. . . . A judgment or order is entered within the meaning of this rule when it is signed by the judge and filed with the clerk."); compare NRS 34.575 (providing that an appeal from the denial of a petition for a writ of habeas corpus must be made within thirty days after service by the court of written notice of entry of the order or judgment). Appellant may not selectively take safe harbor under the provisions of NRS chapter 34 because he did not file a post-conviction petition for a writ of habeas corpus pursuant to that chapter. See Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996) (recognizing that habeas corpus is a unique remedy governed by its own statutes regarding procedure and appeal and that a litigant may not selectively apply habeas procedures to take advantages of the habeas appeal statute).