

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK EVERETT BISHOP,
Petitioner,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondent.

No. 44279

FILED

MAR 03 2005

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

ORDER DENYING PETITION

This is a proper person petition for a writ of mandamus. Petitioner seeks an order directing the district court to transmit a notice of appeal purportedly filed in the district court.

Petitioner asserts that the district court denied his post-conviction petition for a writ of habeas corpus on May 7, 2004. Petitioner asserts that he sent a notice of appeal to be filed in the district court on May 13, 2004. However, a notice of appeal has not been transmitted to this court from the May 7, 2004 decision.

Upon the filing of a notice of appeal in the district court, the clerk of the district court is required to immediately transmit to the clerk of this court two notice of appeal packets containing, among other things, the notice of appeal.¹ The clerk of the district court is required to transmit the notice of appeal packets despite any deficiencies in the notice of

¹See NRAP 3(e).

appeal.² The failure to transmit a notice of appeal may be an issue for which there is no adequate legal remedy.³

It was unclear from the documents before this court if the district court denied petitioner's habeas corpus petition on May 7, 2004. It was also unclear whether a notice of appeal was sent to the district court. Therefore, this court directed the State to respond to this order and inform this court whether the district court had resolved petitioner's habeas corpus petition, whether a notice of appeal was filed in the district court, and if a notice of appeal was filed, why a writ should not issue to cause the clerk of the district court to immediately transmit the notice of appeal to this court.

On February 7, 2005, the clerk of the district court caused petitioner's May 2004 notice of appeal to be filed in the district court. The notice of appeal was transmitted to this court and docketed in Docket No. 44668. The clerk of the district court informed this court that petitioner's May 2004 notice of appeal was not filed due to a mistake at the district court level. Attached to the notice of appeal is a copy of the envelope used for mailing the notice of appeal; notably, the envelope contains a stamped date of May 17, 2004. The May 2004 notice of appeal was timely delivered to prison officials for filing, and thus, the notice of appeal was timely filed for purposes of this court's jurisdiction.⁴ Because petitioner has received

²See NRAP (3)(a)(2).

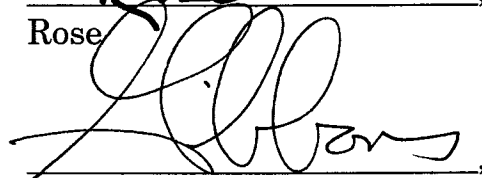
³See NRS 34.160; NRS 34.170.

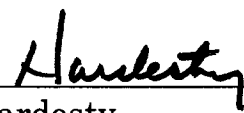
⁴See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official).

the relief that he sought, the filing of his notice of appeal, no further relief is warranted in this matter. Accordingly, we

ORDER the petition DENIED.⁵


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Janet J. Berry, District Judge
Derrick Everett Bishop
Attorney General Brian Sandoval/Carson City
Washoe District Court Clerk

⁵On February 4, 2005, this court received a second motion for extension of time from the State to file a response. The issue to be addressed in the State's response has been rendered moot. Thus, no response is required in this matter.