

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL GEORGE SIMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44350

FILED

MAR 04 2005

ORDER DISMISSING APPEAL

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

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Sixth Judicial District Court, Pershing County; Richard Wagner, 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 October 19, 2004. Appellant's notice of appeal was due on November 18, 2004.¹ Appellant's notice of appeal, however, was not filed in the district court until November 23, 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 November 18, 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

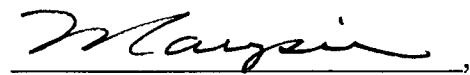
¹NRAP 4(b)(1) ("In a criminal case, the notice of appeal shall be filed in the district court within thirty (30) days after the entry of the judgment or order appealed from."); see also Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996). A notice of entry of order was not required for an order denying a motion to correct an illegal sentence, and such a notice does not trigger the time for filing a notice of appeal under NRAP 4(b)(1).

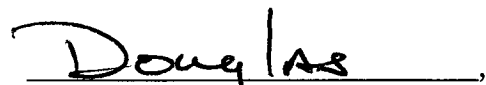
²Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

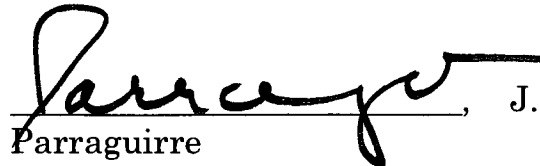
the attorney general to obtain and transmit to this court a copy of any documents in the prison indicating the date upon which appellant delivered his notice of appeal to prison officials.³ The attorney general filed a timely response to this court's January 4, 2005 order. The attorney general indicates that appellant used the outgoing legal mail log on November 19, 2004, for legal mail destined for the Sixth Judicial District Court. November 19, 2004 falls one day beyond the statutory time period.

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, the log indicates that appellant untimely delivered his notice of appeal to a prison official. 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.
Maupin

 J.
Douglas

 J.
Parraguirre

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

⁴Id. at 476-77, 835 P.2d at 13.

cc: Hon. Richard Wagner, District Judge
Michael George Sims
Attorney General Brian Sandoval/Carson City
Pershing County Clerk