

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN WILLIAM DUNCAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44446

FILED

MAR 16 2005

ORDER DISMISSING APPEAL

A. Cantillo
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of burglary. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the judgment of conviction was entered by the district court on November 16, 2004. The notice of appeal was filed on December 23, 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

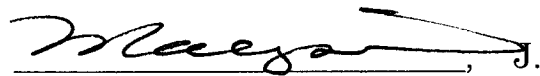
Accordingly, on January 13, 2005, this court ordered appellant's counsel Kevin Van Ry to show cause why this appeal should not be dismissed for lack of jurisdiction. On February 22, 2005, Van Ry

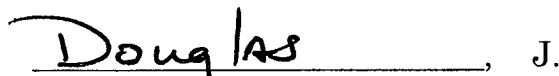
¹Appellant apparently signed the notice of appeal before the expiration of the appeal period. It therefore appeared possible that the notice of appeal was delivered to prison officials within the thirty (30) day period, and may therefore be timely. Kellogg v. Journal Communications, 108 Nev. 474, 835 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).

filed a response in which he informs this court that he spoke with a law clerk at the prison where appellant is incarcerated. Van Ry further informs this court that according to the law clerk, there is no entry in the "log book" regarding appellant's notice of appeal. Because appellant has been unable to provide evidence that he delivered the notice of appeal to prison officials within the 30-day period, we conclude that we lack jurisdiction to entertain this appeal, and we

ORDER this appeal DISMISSED.


Maupin


Douglas


Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Kevin A. Van Ry
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk