

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERMAN BLOCK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44651

FILED

JUN 01 2005

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

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's petition on November 17, 2004, and the clerk of the district court served notice of entry of that order on December 27, 2004. Appellant's notice of appeal was due on January 31, 2005.<sup>1</sup>

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<sup>1</sup>See NRS 34.575 (providing that an appeal may be filed from an order denying a petition for a writ of habeas corpus within 30 days after service by the district court of written notice of entry of the order); NRAP 26(a) (providing that if the last day of the designated time period falls on a Saturday, Sunday, or nonjudicial day, the period shall be extended until the end of the next day which is not a Saturday, Sunday, or nonjudicial day); NRAP 26(c) ("Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, three (3) days shall be added to the prescribed period.").

Appellant's notice of appeal, however, was not filed in the district court until February 2, 2005, two days beyond the relevant appeal period.<sup>2</sup> An untimely notice of appeal fails to vest jurisdiction in this court.<sup>3</sup>

Because appellant signed his notice of appeal on January 25, 2005, within the period for filing a timely notice of appeal, this court directed the attorney general to obtain and transmit a certified copy of the notice of appeal log in order to determine the date the notice of appeal was delivered to prison officials.<sup>4</sup> The attorney general filed a timely response. The attorney general indicates that appellant did not use the notice of appeal log. Appellant argues in his response that he submitted the notice of appeal on time, that he did not know about the notice of appeal log and that a brass slip demonstrates timely delivery of his notice of appeal.

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 log.<sup>5</sup> Here, appellant failed to use the log, and thus, the date the notice of appeal was filed in the district court

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<sup>2</sup>Appellant filed a second untimely notice of appeal on April 4, 2005.


<sup>3</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

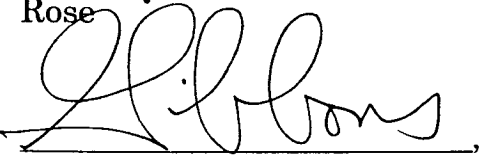
<sup>4</sup>Kellogg v. Journal Communications, 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official).

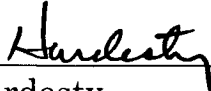
<sup>5</sup>Id. at 476-77, 835 P.2d at 13.

controls. No documentation has been presented that appellant delivered his notice of appeal in a timely fashion.<sup>6</sup> 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.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Sally L. Loehrer, District Judge  
Sherman Block  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>The affidavit of the custodian of records indicates that the brass slip was dated February 14, 2005, well after the date appellant's notice of appeal was filed in the district court. Thus, the brass slip is not proof of timely delivery.