

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS CASTANEDA CEJA A/K/A  
JESUS CASTENEDA CEJA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44806

**FILED**

MAY 27 2005

ORDER DISMISSING APPEAL

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

This is an appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the written judgment of conviction on January 20, 2005. Appellant's notice of appeal was due on February 22, 2005.<sup>1</sup> Appellant's notice of appeal, however, was not filed in the district court until February 28, 2005, six

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<sup>1</sup>See NRAP 4(b)(1) (providing for a thirty-day appeal period); 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).

days beyond the relevant appeal period. An untimely notice of appeal fails to vest jurisdiction in this court.<sup>2</sup>

On April 8, 2005, this court directed appellant's counsel to show cause why this appeal should not be dismissed. This court noted that appellant signed his notice of appeal on February 22, 2005, within the period for filing a timely notice of appeal, and this court directed appellant's counsel to investigate if there was documentation indicating the date the notice of appeal was delivered to prison officials.<sup>3</sup>

Appellant's counsel has filed a timely response to this court's order. Appellant's counsel represents that there is no record of the date of delivery of the notice of appeal. However, appellant's counsel asks this court to treat this notice of appeal as timely because appellant informed his counsel that he delivered the notice of appeal within the thirty-day appeal 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 log.<sup>4</sup> Here, appellant failed to use the log,

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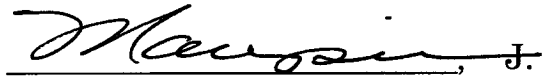
<sup>2</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>3</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).

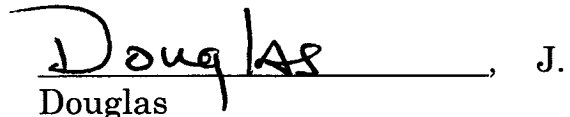
<sup>4</sup>Id. at 476-77, 835 P.2d at 13.

and thus, the date the notice of appeal was filed in the district court controls. Because appellant's notice of appeal was untimely filed, we conclude that we lack jurisdiction to consider this appeal, and we

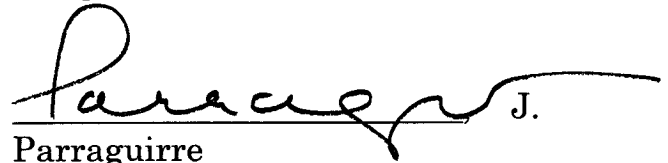
ORDER this appeal DISMISSED.

 J.

Maupin

 J.

Douglas

 J.

Parraguirre

cc: Hon. Janet J. Berry, District Judge  
Hardy Law Group  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk