

IN THE SUPREME COURT OF THE STATE OF NEVADA

HERBERT E. MCCOOL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44988

**FILED**

JUN 08 2005

*J. Smith*  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of the performance of an act or neglect of duty in willful, or wanton disregard of the safety of persons or property. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

This court's preliminary review of this appeal revealed a jurisdictional defect. The judgment of conviction was entered by the district court on February 9, 2005. The notice of appeal was filed on March 24, 2005, after the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.<sup>1</sup> It appeared possible, however, that the notice of appeal was delivered to prison officials within the thirty day period, and might therefore be timely.<sup>2</sup>

Accordingly, on April 8, 2005, this court ordered appellant's counsel to show cause why this appeal should not be dismissed. Counsel

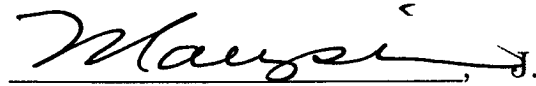
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<sup>1</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

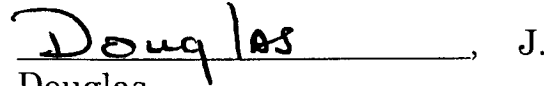
<sup>2</sup>Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (notice of appeal shall be deemed filed on the date it is delivered to a prison official).

has not responded to our order. We conclude that we lack jurisdiction to entertain this appeal, and we

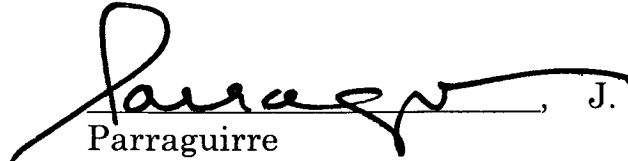
ORDER this appeal DISMISSED.



Maupin



Douglas



Parraguirre

cc: Hon. John P. Davis, District Judge  
Gensler Earnest  
Attorney General Brian Sandoval/Carson City  
Nye County District Attorney/Tonopah  
Nye County Clerk