

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH E. BROOKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45468

FILED

SEP 15 2005

ORDER DISMISSING APPEAL

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

This is a proper person appeal from an order of the district court denying appellant's motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Valorie Vega, 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 May 12, 2005.¹ Appellant's notice of appeal was due on or before June 13, 2005, but was not filed in the district court until June 16, 2005, three 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 June 8, 2005. 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 the attorney general to obtain and transmit to this court a copy of any documents in the prison indicating the date upon which appellant

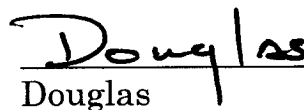
¹See NRAP 4(b); NRAP 26(a) ("The last day of the period shall be included, unless it is a Saturday, Sunday or a nonjudicial day, in which event the period extends until the end of the next day which is not a Saturday, Sunday or a nonjudicial day.").

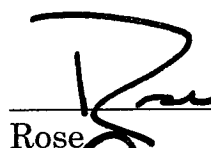
²Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

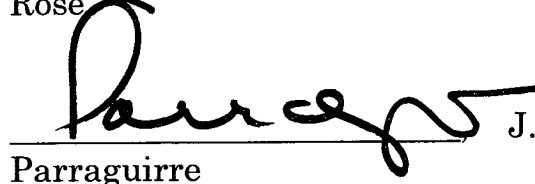
delivered his notice of appeal to prison officials.³ The attorney general filed a response to this court's July 13, 2005 order. The attorney general indicates that appellant used the outgoing legal mail log on June 14, 2005, for legal mail destined for the clerk of the Eighth Judicial District Court. The notice of appeal log was not used in the instant case. June 14, 2005, 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 did not timely deliver 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.
Douglas

 _____, J.
Rose

 _____, 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. Valorie Vega, District Judge
Keith E. Brooks
Attorney General Brian Sandoval/Carson City
Attorney General Brian Sandoval/Las Vegas
Clark County District Attorney David J. Roger
Clark County Clerk