

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARELL WAYNE KIRKWOOD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45483

**FILED**

SEP 23 2005

ORDER DISMISSING APPEAL

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, 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 17, 2005. Appellant's notice of appeal, however, was not filed in the district court until June 17, 2005, one day beyond the relevant appeal period.<sup>1</sup> An untimely notice of appeal fails to vest jurisdiction in this court.<sup>2</sup>

Appellant signed his notice of appeal on June 12, 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

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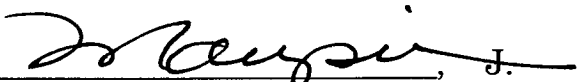
<sup>1</sup>See NRAP 4(b); Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996). We note that this court inadvertently cited to NRS 34.575 in its July 13, 2005 order to show cause. However, because appellant filed a motion to correct an illegal sentence, NRAP 4(b) is the proper citation for the time for filing a notice of appeal from an order denying a motion to correct an illegal sentence. See Edwards, 112 Nev. at 709; 918 P.2d at 325.


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

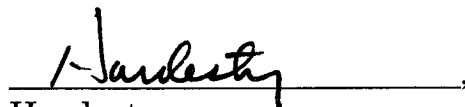
delivered his notice of appeal to prison officials.<sup>3</sup> The attorney general filed a response to this court's July 13, 2005 order. The attorney general indicates that appellant did not use either the notice of appeal log or the outgoing legal mail log during the time in question.

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.<sup>4</sup> Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to Kellogg. Therefore, the June 17, 2005 filing date of the notice of appeal 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.<sup>5</sup>

  
Maupin J.

  
Gibbons J.

  
Hardesty J.

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<sup>3</sup>See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992).

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

<sup>5</sup>We have considered all proper person documents received in this matter, and we conclude that no relief is warranted for the reason set forth above.

cc: Hon. Andrew J. Puccinelli, District Judge  
Darell Wayne Kirkwood  
Attorney General Brian Sandoval/Carson City  
Attorney General Brian Sandoval/Las Vegas  
Elko County District Attorney  
Elko County Clerk