

IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTOPHER GLENN WOOLFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47634

FILED

SEP 20 2006

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 a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, 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 May 12, 2006, and the clerk of the district court served notice of entry of that order on May 17, 2006. Appellant's notice of appeal was due on June 19, 2006.¹ Appellant's notice of appeal, however, was not filed in the district court until June 28, 2006,

¹See 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(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.").

nine days beyond the relevant appeal period. An untimely notice of appeal fails to vest jurisdiction in this court.²

Under this court's holding in Kellogg v. Journal Communications, if appellant delivered his notice of appeal to a prison official for mailing on or before June 19, 2006, his notice of appeal would be deemed timely filed.³ Because appellant signed his notice of appeal on May 30, 2006, this court directed the attorney general to obtain and transmit a copy of the notice of appeal log.

The attorney general submitted a timely response and stated that there is no record of when appellant mailed his notice of appeal. In support, the attorney general attaches an affidavit from William T. Curry, a law library supervisor at the Northern Nevada Correctional Center, stating that there is no record of appellant submitting any pieces of outgoing legal mail from May 30, 2006, through June 19, 2006.

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 notice of appeal log.⁴ Here, there is no record of the date appellant delivered his notice of appeal to a prison official

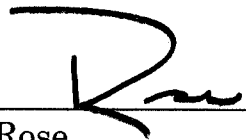
²Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).


³See 108 Nev. 474, 835 P.2d 12 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official).

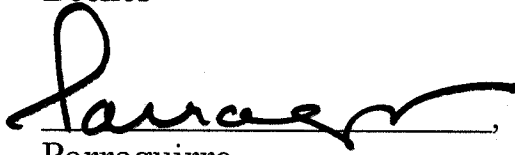
⁴Id. at 476-77, 835 P.2d at 13.

pursuant to Kellogg. Therefore, the June 28, 2006 filing date of the notice of appeal in the district court controls. Because appellant's notice of appeal was untimely filed, we

ORDER this appeal DISMISSED.


_____, C.J.
Rose


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Robert H. Perry, District Judge
Kristopher Glenn Woolfe
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk