

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER MICHAEL GEDROSE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47727

**FILED**

**NOV 09 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; Brent T. Adams, 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 June 7, 2006, and the clerk of the district court served notice of entry of that order on June 13, 2006. Appellant's notice of appeal was due on July 17, 2006.<sup>1</sup> Appellant's notice of appeal, however, was not filed in the district court until July 19, 2006, two days beyond the relevant appeal period. An untimely notice of appeal fails to vest jurisdiction in this court.<sup>2</sup>

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<sup>1</sup>See NRS 34.575; NRAP 26 (a),(c).

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

Appellant signed his notice of appeal on July 15, 2006. 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 delivered his notice of appeal to prison officials.<sup>3</sup>

On September 13, 2006, the attorney general filed a response and indicated that appellant did not use the notice of appeal log maintained at the prison. On September 25, 2006, this court directed the attorney general to file a supplemental response indicating whether the prison maintained a separate outgoing legal mail log, and if so, whether appellant used that log. On October 11, 2006, the attorney general filed a response indicating that the Nevada State Prison at Carson City does not maintain a separate outgoing legal mail log. Further, the attorney general stated that a review of the brass slips for mailing did not indicate a request for mailing 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 notice of appeal 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 July 19, 2006 filing date of the

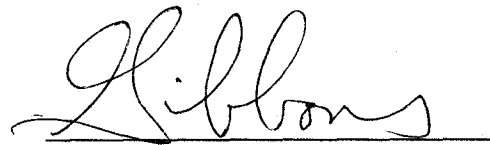
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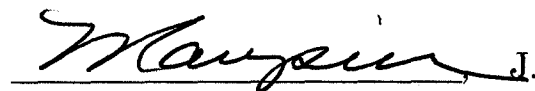
<sup>3</sup>See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992).

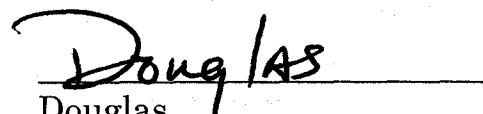
<sup>4</sup>Id. at 476-77, 835 P.2d at 13.

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.

  
Gibbons, J.

  
Maupin, J.

  
Douglas, J.

cc: Hon. Brent T. Adams, District Judge  
Christopher Michael Gedrose  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk