

IN THE SUPREME COURT OF THE STATE OF NEVADA

IRVIN RICHARD MCGARVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47750

FILED

NOV 28 2006

ORDER DISMISSING APPEAL

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

This is a proper person appeal from an order of the district court denying appellant's 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 13, 2006, and the clerk of the district court served notice of entry of that order on June 15, 2006. Appellant's notice of appeal was due on July 18, 2006.¹ Appellant's notice of appeal, however, was not filed in the district court until July 21, 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.").

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

Appellant dated his notice of appeal July 12, 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.³ The attorney general filed a timely response to this court's August 15, 2006 order. The attorney general indicates that appellant used the outgoing legal mail log on July 19, 2006, for legal mail destined to the Second Judicial District Court and the Washoe County District Attorney's Office.⁴ A filing date of July 19, 2006, 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.⁵ Here, the log indicates that

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

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

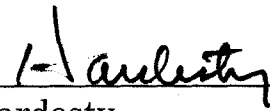
⁴It appears that appellant sent legal mail to this court on July 12, 2005. There is nothing in the documents before this court to indicate that the legal mail was a notice of appeal. However, on July 20, 2006, a proper person petition for a writ of mandamus was filed in this court.

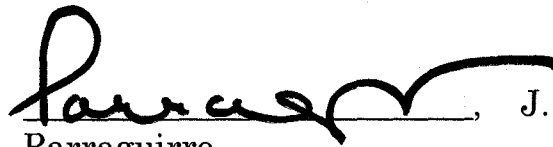
⁵Id. at 476-77, 835 P.2d at 13.

appellant untimely delivered 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.
Becker


_____, J.
Hardesty


_____, J.
Parraguirre

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