

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48266

**FILED**

**JAN 08 2007**

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. Eighth Judicial District Court, Clark County; Donald M. Mosley, 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 August 28, 2006. The clerk of the district court served notice of entry on August 29, 2006. Appellant's notice of appeal was due on October 2, 2006.<sup>1</sup> Appellant's notice of appeal, however, was not filed in the district court until October 16, 2006, fourteen days beyond the relevant appeal period. An untimely notice of appeal fails to vest jurisdiction in this court.<sup>2</sup>

Appellant dated his notice of appeal October 2, 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

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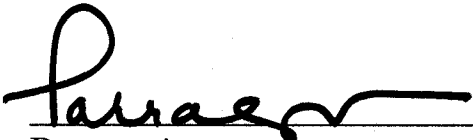
<sup>1</sup>See NRS 34.575; NRAP 4(b); NRAP 26(a), (c).

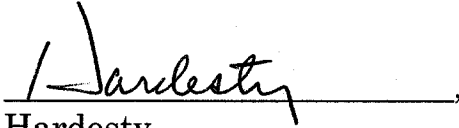
<sup>2</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

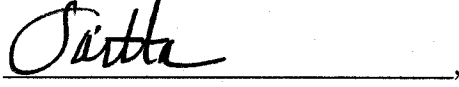
delivered his notice of appeal to prison officials.<sup>3</sup> The attorney general filed a timely response to this court's November 16, 2006 order. The attorney general indicates that appellant did not use the notice of appeal log, but used the outgoing legal mail log on October 5, 2006, for legal mail destined to the Eighth Judicial District Court, the Clark County District Attorney's Office, the Attorney General's Office, and the Warden at Indian Springs. A filing date of October 5, 2006, falls three days 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.<sup>4</sup> Here, the log indicates that 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.

  
Parraguirre J.

  
Hardesty J.

  
Saitta 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.

cc: Hon. Donald M. Mosley, District Judge  
Shawn Brown  
Attorney General Catherine Cortez Masto/Carson City  
Attorney General Catherine Cortez Masto/Las Vegas  
Clark County District Attorney David J. Roger  
Clark County Clerk