

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK SEIBERT ABRAHAMSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48626

FILED

FEB 07 2007

ORDER DISMISSING APPEAL

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of third-offense driving under the influence. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

The judgment of conviction was entered by the district court on November 14, 2006. The notice of appeal was filed on December 15, 2006, one day after the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.¹ Because it appeared possible that the notice of appeal was delivered to prison officials within the 30-day period, and might therefore be timely,² on January 2, 2007, this court ordered counsel for appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

On January 23, 2007, counsel for appellant filed a response to this court's order. Attached to the response is a letter from the law library supervisor at the Northern Nevada Correctional Center. In the letter, the

¹See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

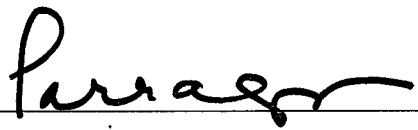
²See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (notice of appeal shall be deemed filed on the date it is delivered to a prison official).

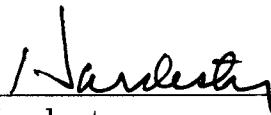
supervisor informs counsel for appellant that there are no entries in the notice of appeal log from appellant.


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.³ Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to Kellogg. Therefore, the December 15, 2006, 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.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Janet J. Berry, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk
Mark Seibert Abrahamson

³Id. at 476-77, 835 P.2d at 13.