

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MICHAEL ALLINGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48668

FILED

MAR 06 2007

ORDER DISMISSING APPEAL

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

This is an 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; Jerome Polaha, Judge.

The district court entered the order denying appellant's petition on October 26, 2006, and the clerk of the district court served notice of entry of that order on October 31, 2006. The notice of appeal was filed on December 20, 2006, after the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.¹ It appeared possible that the notice of appeal might have been delivered to prison officials within the appeal period and might therefore be timely.²

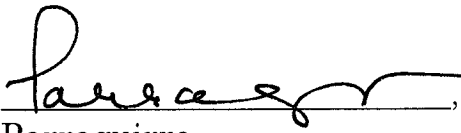
Accordingly, on January 23, 2007, this court ordered appellant's counsel to investigate on behalf of appellant whether any documents in the custody of prison officials, such as a prison log, would

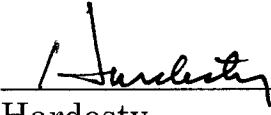
¹See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).


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).

verify whether appellant submitted his notice of appeal to a prison official for mailing prior to the expiration of the thirty-day appeal period. On February 13, 2007, counsel filed a response to this court's order. In the response, counsel informs this court that there is no record of appellant sending out any legal mail, and that there are no entries for appellant in the "Notice of Appeal Log." We therefore conclude that we lack jurisdiction to entertain this appeal, and we

ORDER this appeal DISMISSED.³

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

³Because appellant is represented by counsel in this matter, we decline to grant appellant permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents appellant has submitted to this court in this matter.

cc: Hon. Jerome Polaha, District Judge
Kenneth A. Stover
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk
John Michael Allinger