

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARELL WAYNE KIRKWOOD, SR.
A/K/A DARELL WAYNE KIRKWOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49307

FILED

MAY 11 2007

WANNETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a motion to correct an illegal sentence. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

On May 17, 2005, the district court entered a written order denying appellant's motion to correct an illegal sentence. On June 17, 2005, appellant filed a notice of appeal in the district court, one day beyond the 30-day appeal period.¹ This court dismissed appellant's untimely appeal for lack of jurisdiction.²

On April 16, 2007, appellant filed a second notice of appeal from the May 17, 2005 order of the district court. Appellant indicated that he recently found evidence that he submitted his 2005 notice of appeal to prison officials on June 14, 2005—within the appeal period. Appellant


¹See NRAP 4(b); Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

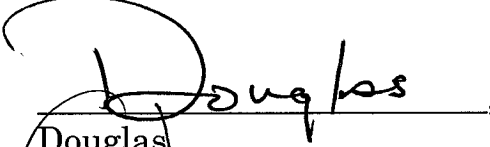
²See Kirkwood v. State, Docket No. 45483 (Order Dismissing Appeal, September 23, 2005).

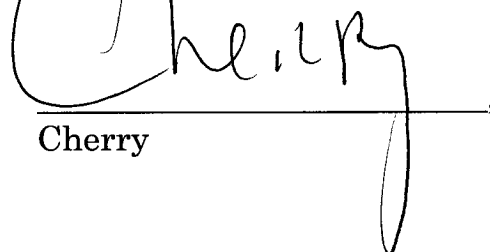
appears to be challenging this court's dismissal of his 2005 notice of appeal.

This court's review of this appeal reveals a jurisdictional defect. Specifically, the district court entered the order denying his motion on May 17, 2005. Appellant did not file the instant notice of appeal, however, until April 16, 2007, well after the expiration of the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.³ Appellant may not challenge this court's prior decision in the instant appeal.⁴ Accordingly, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

³See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁴Further, this court's prior dismissal indicates that appellant did not use any of the logs maintained at the prison. A stamp on an envelope is insufficient proof of delivery to prison officials. See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992).

cc: Hon. Andrew J. Puccinelli, District Judge
Darell Wayne Kirkwood Sr.
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk