

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENTON LEROY BOND,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49571

**FILED**

**JUL 26 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 robbery with the use of a deadly weapon. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

The judgment of conviction was entered by the district court on April 27, 2007. The notice of appeal was filed on May 30, 2007, after the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.<sup>1</sup> Because it appeared possible that the notice of appeal was delivered to prison officials within the 30-day period, and might therefore be timely,<sup>2</sup> on June 14, 2007, this court entered an order directing counsel for appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.

On July 3, 2007, counsel for appellant filed a response to the order to show cause. In the response, counsel for appellant advises that appellant told him that he sent the notice of appeal in the "normal mail"

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

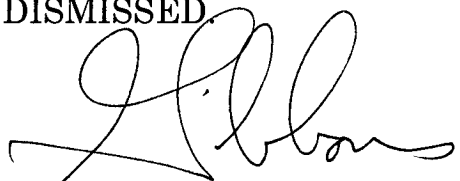
<sup>2</sup>See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (notice of appeal shall be deemed filed on the date it is delivered to a prison official).

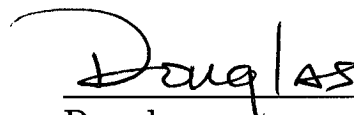
on May 23, 2007. Additionally, attached to the response is a letter from the law library supervisor at the Northern Nevada Correctional Center. In the letter, the supervisor informs counsel for appellant that there are no entries in the notice of appeal log from appellant.

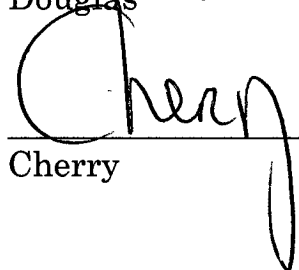
This court's decision in Kellogg v. Journal Communications contemplates that the date of delivery of the notice of appeal to a prison official will be determined by the date recorded in the prison mail log.<sup>3</sup> Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to Kellogg. Therefore, the May 30, 2007, 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.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>3</sup>Id. at 476-77, 835 P.2d at 13.

cc: Hon. Brent T. Adams, District Judge  
Washoe County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk  
Benton Leroy Bond