

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LEE HINES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49743

FILED

OCT 31 2007

BY *J. Bloom*
JAVETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from the May 10, 2007 order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; John P. Davis, 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 May 10, 2007, and the clerk of the district court served notice of entry of that order on May 14, 2007. Appellant's notice of appeal was due on June 18, 2007.¹ Appellant's notice of appeal, however, was not filed in the district court until June 27, 2007,

¹See NRS 34.575 (providing that an appeal may be filed from an order denying a petition for a writ of habeas corpus within 30 days after service by the district court of written notice of entry of the order); NRAP 26(a) (providing that if the last day of the designated time period falls on a Saturday, Sunday, or nonjudicial day, the period shall be extended until the end of the next day which is not a Saturday, Sunday, or nonjudicial day); NRAP 26(c) ("Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by mail, three (3) days shall be added to the prescribed period.").

nine days beyond the relevant appeal period. An untimely notice of appeal fails to vest jurisdiction in this court.²

Appellant signed his notice of appeal on June 18, 2007. Under this court's holding in Kellogg v. Journal Communications, if appellant delivered his notice of appeal to a prison official for mailing on June 18, 2007, his notice of appeal would be deemed timely filed.³ Because appellant had not submitted documentation verifying the actual date he delivered his notice of appeal to a prison official, this court was unable to determine whether the notice of appeal should be deemed timely pursuant to Kellogg. Thus, this court directed the attorney general to file a response regarding the timeliness of the notice of appeal and obtain and transmit copies of any relevant logs maintained at the prison.

In its response, the attorney general indicated that appellant did not use any logs on or before June 18, 2007. However, appellant used the legal mail log for legal mail directed to the Fifth Judicial District Court on June 21, 2007. A filing date of June 21, 2007, 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.⁴ Here, the log indicates that appellant untimely delivered his notice of appeal to a prison official.

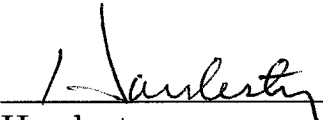
²Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

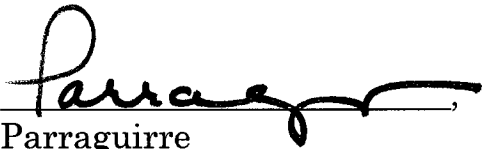
³108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official).

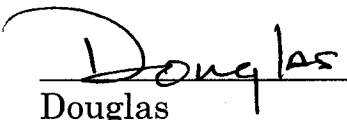
⁴Id. at 476-77, 835 P.2d at 13.

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.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. John P. Davis, District Judge
David Lee Hines
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Pahrump
Nye County Clerk