

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARTLEY DAMIAN LEE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49880

**FILED**

NOV 16 2007

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted murder with the use of a deadly weapon. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

The clerk of this court docketed this appeal on July 25, 2007, upon the receipt of a document entitled: "Notice of Appeal (Per DA's Office)/Stipulation and Order." The district court's minute entries indicate that, on June 22, 2007, at a hearing apparently concerning appellant's post-conviction petition for a writ of habeas corpus, counsel for the State informed the district court that the State had discovered in its files an "Inmate Request form" dated December 27, 2005. The State's review of this document apparently persuaded the State that appellant had appropriately sought to timely file an appeal from his conviction. Thus, based on this "Inmate Request Form," the parties thereafter entered into a stipulation agreeing that a notice of appeal from the judgment of conviction was timely filed.

On August 8, 2007, this court entered an order noting that our preliminary review of the documents submitted in this appeal indicated that the inmate request form was never actually filed in the district court. Our order also noted that jurisdiction may not be conferred by stipulation

of the parties.<sup>1</sup> Accordingly, this court ordered appellant's counsel, Scott W. Edwards, to provide this court with additional jurisdictional documentation and information. In particular, this court directed Edwards to provide this court with a copy of the inmate request form that was the basis of the "notice of appeal/stipulation" and to file a written response addressing whether the inmate request form was ever submitted to the district court or to prison officials.<sup>2</sup>

On September 19, 2007, Edwards filed a response to this court's order. In the response, Edwards concedes that the inmate request form was never submitted to the district court. On October 8, 2007, Edwards filed a supplemental response including a copy of the inmate request form at issue. In the supplemental response, Edwards concedes that the inmate request form was never delivered to prison officials.

An untimely notice of appeal fails to vest jurisdiction in this court.<sup>3</sup> Because appellant is unable to demonstrate that the inmate request form was filed in the district court or delivered to prison officials

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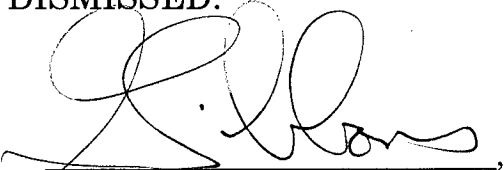
<sup>1</sup>See Walker v. Scully, 99 Nev. 45, 657 P.2d 94 (1983) (the thirty-day appeal period may not be extended by the district court); Scherer v. State, 89 Nev. 372, 374, 513 P.2d 1232, 1233-34 (1973) ("jurisdiction cannot be conferred upon an appellate court by the consent or stipulation of the parties or their counsel"); see also NRAP 26(b) ("the court may not enlarge the time for filing a notice of appeal").

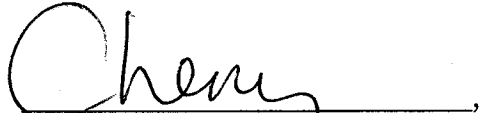
<sup>2</sup>See Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) (notice of appeal shall be deemed filed on the date it is delivered to a prison official).

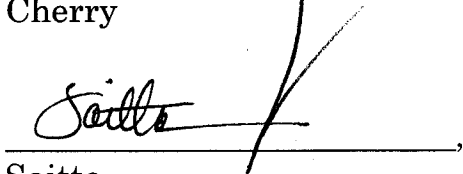
<sup>3</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

within the thirty-day appeal prescribed by NRAP 4(b), we conclude that we lack jurisdiction to entertain this appeal. Accordingly, we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Gibbons

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

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Robert H. Perry, District Judge  
Scott W. Edwards  
Robert Bruce Lindsay  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk  
Bartley Damian Lee