

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL LEWIS LUKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50867

FILED

MAY 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a post-conviction motion to withdraw a guilty plea. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. When our preliminary review of this appeal revealed a potential jurisdictional defect, this court ordered counsel for appellant to show cause why this appeal should not be dismissed. In particular, we noted that the order denying the post-conviction motion was entered on November 29, 2007, but appellant did not file a notice of appeal in district court until January 8, 2008, well after the 30-day appeal period provided in NRAP 4(b).¹ An untimely notice of appeal fails to vest jurisdiction in this court.²

¹See also Hart v. State, 116 Nev. 558, 562, 1 P.3d 969, 871-72 (2000) (holding that a post-conviction motion to withdraw a guilty plea is a motion that is “incident to the proceedings in the trial court”).

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

In response to the order to show cause, counsel for appellant indicates that after the oral denial of the motion, appellant did not indicate an interest in appealing but that after expiration of the 30-day appeal period, appellant contacted counsel and “expressed disappointment that the appeal deadline had run and . . . that the appeal was not brought.” Counsel suggests the delay in filing the notice of appeal should be excused because the Department of Corrections “refused delivery of the district court order denying relief” and therefore, if appellant “had a change of [heart] and wanted to appeal,” the refused delivery prevented appellant from timely informing counsel of his desire to appeal.

This court has “consistently held that an untimely notice of appeal fails to vest jurisdiction in this court.”³ NRAP 4(b) provides that the notice of appeal in this case had to be filed in district court no later than 30 days after entry of the written order. Unlike other jurisdiction provisions, this one does not require service of notice of entry.⁴ And our rules expressly preclude us from enlarging the time for filing a notice of appeal.⁵ Because a timely notice of appeal is a prerequisite to this court’s


³Id. at 352, 871 P.2d at 946; Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1134 (1998) (“The filing of a timely notice of appeal is a fundamental jurisdictional requirement; without it, this court never obtains jurisdiction over an appeal and has no power to consider the issues raised, no matter how much merit they may have.”).

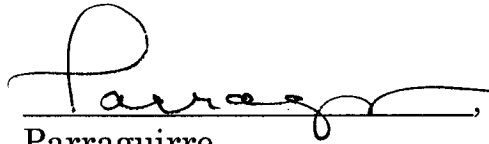
⁴Cf. NRS 34.575(1).

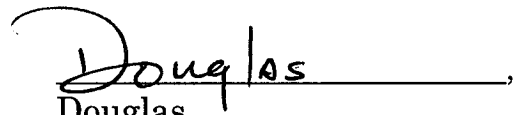
⁵NRAP 26(b) (“the court may not enlarge the time for filing a notice of appeal”).

jurisdiction that cannot be excused by the court and appellant's notice of appeal was not filed within the 30-day appeal period, we conclude that we lack jurisdiction over this appeal. Accordingly, we

ORDER this appeal DISMISSED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. J. Michael Memeo, District Judge
Elko County District Attorney
Humboldt-Pershing County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk