

IN THE SUPREME COURT OF THE STATE OF NEVADA

LESLY J. BLANCHARD, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51035

**FILED**

APR 25 2008

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

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, 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 December 11, 2007, and the clerk of the district court served notice of entry of that order on December 17, 2007. Appellant's notice of appeal was due on January 22, 2008.<sup>1</sup> Appellant's notice of appeal, however, was not received by the district

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<sup>1</sup>See 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.").

court until January 31, 2008, and not filed in the district court until February 1, 2008, approximately nine days beyond the relevant appeal period. An untimely notice of appeal fails to vest jurisdiction in this court.<sup>2</sup>

Appellant signed his notice of appeal on January 19, 2008. Under this court's holding in Kellogg v. Journal Communications, if appellant had delivered his notice of appeal to a prison official for mailing on or before January 22, 2008, his notice of appeal would be deemed timely filed.<sup>3</sup> Because appellant had not submitted documentation verifying the actual date he may have 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 and inform this court whether any logs maintained by the prison had been used to establish a delivery date to prison officials. In its response, the attorney general indicated that appellant did not use any logs on or before January 22, 2008.

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 log.<sup>4</sup> Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to

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

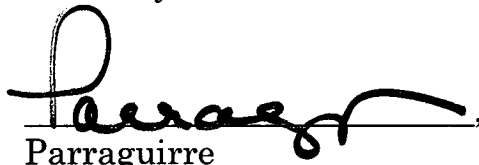
<sup>3</sup>Kellogg v. Journal Communications, 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official).

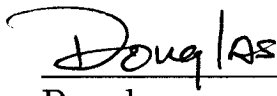
<sup>4</sup>Id. at 476-77, 835 P.2d at 13.

Kellogg. Therefore, the January 31, 2008 receipt date and the February 1, 2008 filing date of the notice of appeal in the district court control. 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. Donald M. Mosley, District Judge  
Lesly J. Blanchard Jr.  
Attorney General Catherine Cortez Masto/Las Vegas  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk