

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHANIE JO HALUZAK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51178

FILED

MAY 07 2008

THACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of unlawful possession for purpose of sale. Seventh Judicial District Court, Lincoln County; Dan L. Papez, Judge.

Our preliminary review of this appeal revealed a jurisdictional defect. The notice of appeal was filed on February 26, 2008, well after the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.¹ Because the notice of appeal appeared to be untimely, on March 26, 2008, this court entered an order directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.


Appellant's counsel has responded. Counsel acknowledges that the notice of appeal was untimely filed. Counsel asserts that although appellant timely requested trial counsel to file a notice of appeal, trial counsel's unexpected resignation resulted in the untimely filing of the notice of appeal. Counsel asserts that the public defender was not served

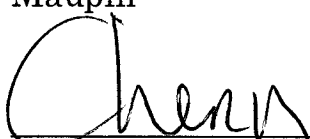
¹See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).


with a copy of the judgment of conviction, and argues that had notice of entry of the judgment been served on the public defender, the notice of appeal most likely would not have been untimely. Counsel further argues that to be equitable, this court should adopt a rule stating that the time for filing a notice of appeal in a criminal case commences to run after service of a written notice of entry.

Having reviewed the documents in this appeal, we conclude that the notice of appeal was untimely filed. We decline to adopt a new rule altering the time period for filing a notice of appeal in a criminal case. We note that a defendant who has been deprived of the right to a direct appeal may seek relief by filing a timely post-conviction petition for a writ of habeas corpus that raises an appeal deprivation claim.² We conclude that we lack jurisdiction to entertain this appeal, and we

ORDER this appeal DISMISSED.


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

²See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); NRS 34.726.

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Carson City
Attorney General Catherine Cortez Masto/Carson City
Lincoln County District Attorney
Lincoln County Clerk
Stephanie Haluzak