

IN THE SUPREME COURT OF THE STATE OF NEVADA

KELSEY JAMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51435

FILED

JUL 11 2008

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

ORDER DISMISSING APPEAL

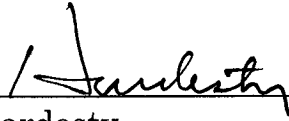
This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery by a prisoner with the intent to promote, further or assist a criminal gang. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

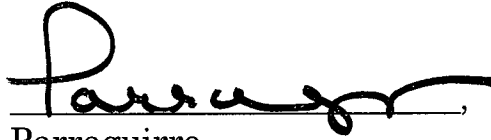
Our initial review of this appeal revealed a potential jurisdictional defect. Specifically, the notice of appeal appeared to be untimely filed. The judgment of conviction was filed on February 13, 2008. The notice of appeal was filed on March 19, 2008, 5 days after the 30-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court.¹ Accordingly, this court ordered appellant's counsel Jess R. Marchese to show cause why this appeal should not be dismissed for lack of jurisdiction. Marchese has responded and concedes that the notice of appeal was filed 5 days after the 30-day appeal period.

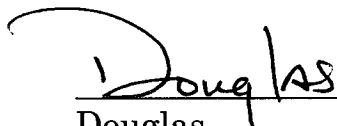
¹See *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

Having reviewed the documents in this appeal, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Sally L. Loehrer, District Judge
Marchese Law Office
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk
Kelsey James