

IN THE SUPREME COURT OF THE STATE OF NEVADA

CORNELIUS J. MILLING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51771

**FILED**

OCT 06 2008

TRACIE L. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the judgment of conviction on April 25, 2008. Appellant's notice of appeal was due on May 27, 2008.<sup>1</sup> Appellant's notice of appeal, however, was not filed in the district court until May 29, 2008, two days beyond the relevant appeal period. "[A]n untimely notice of appeal fails to vest jurisdiction in this court."<sup>2</sup>

Under this court's holding in Kellogg v. Journal Communications, if appellant delivered his notice of appeal to a prison official for mailing on or before May 27, 2008, his notice of appeal would be

---

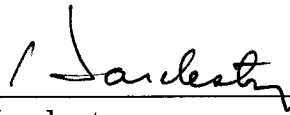
<sup>1</sup>See NRAP 4(b); Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).


<sup>2</sup>Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

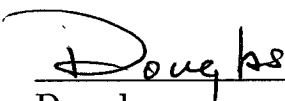
deemed timely filed.<sup>3</sup> Because appellant signed his notice of appeal on May 22, 2008, this court directed appellant's counsel to obtain and transmit a copy of the prison's notice of appeal log. If appellant did not use the notice of appeal log, appellant's counsel was to inform this court whether appellant used any other logs. On September 5, 2008, appellant's counsel submitted a timely response. Counsel indicates that "there is no record that Appellant delivered the Notice of Appeal to a prison official for mailing."

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 mail log.<sup>4</sup> Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to Kellogg. Therefore, the May 29, 2008, filing date of the notice of appeal in the district court controls. Because appellant's notice of appeal was untimely filed, we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

---

<sup>3</sup>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.

cc: Hon. Jackie Glass, District Judge  
James L. Buchanan II  
James Patrick Kelly  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk  
Cornelius J. Milling