

IN THE SUPREME COURT OF THE STATE OF NEVADA

BREE ALISON SWANCER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51830

FILED

SEP 09 2008

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

ORDER DISMISSING APPEAL

This is an appeal from an order revoking probation. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Our preliminary review of this appeal revealed a jurisdictional defect. Specifically, it appeared that the appeal was untimely. The order revoking probation was filed on April 24, 2008. The notice of appeal was filed on June 5, 2008, after the 30-day appeal period prescribed by NRAP 4(b). “[A]n untimely notice of appeal fails to vest jurisdiction in this court.”¹

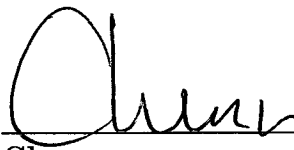
On June 20, 2008, this court ordered appellant’s counsel John E. Oakes to show cause why this appeal should not be dismissed for lack of jurisdiction. On June 25, 2008, Mr. Oakes filed a motion to vacate this appeal. The motion indicated that Mr. Oakes advised his client that this appeal was not the proper forum for seeking credit for time served. The motion, however, did not include an affidavit that counsel explained to appellant the legal consequences of dismissing an appeal. Further, the motion did not address the timeliness of the notice of appeal. Accordingly,

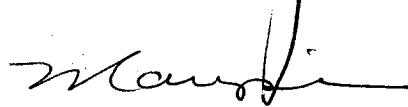
¹Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).


on July 14, 2008, this court entered an order directing Mr. Oakes to file a supplement to the motion to vacate.

On August 8, 2008, Mr. Oakes filed a supplement to the motion to vacate. Mr. Oakes informs this court that the appeal is untimely and therefore this court lacks jurisdiction to consider the appeal. Having reviewed the documents before this court, we conclude this court lacks jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

cc: Hon. Janet J. Berry, District Judge
Law Offices of John E. Oakes
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk
Bree Swancer