

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JAMES IRWIN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52900

FILED

JAN 30 2009

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

ORDER DISMISSING APPEAL


This is an appeal from an amended judgment of conviction. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.


On January 16, 2009, respondent filed a motion to file a late pleading. Respondent seeks leave to file an untimely motion to dismiss this appeal. A motion to dismiss this appeal was submitted on that same date. Because the motion to dismiss was not untimely, this court filed the motion to dismiss on January 16, 2009. Accordingly, we deny the motion to file a late pleading as moot.


Respondent argues that this appeal should be dismissed because the notice of appeal was not timely filed. Appellant opposes the motion to dismiss. Appellant acknowledges that the notice of appeal was not timely and that this court considers timeliness to be a fundamental jurisdictional requirement. However, citing to Huebner v. State, 107 Nev. 328, 810 P.2d 1209 (1991), appellant argues that in exceptional cases this court has relaxed the rule regarding timeliness and urges this court to relax the rule in this instance "as a matter of fundamental fairness under the due process clause."

In Huebner, this court reinstated an appeal that had been dismissed as untimely after finding that due to the practice of the district court clerk it could not be determined whether the notice of appeal was timely received into custody of the district court clerk. Id. at 332. Unlike Huebner, it is clear from the record before this court that the notice of appeal in this case was not timely submitted to the clerk of the district court. The amended judgment of conviction was filed on May 29, 2008. However, the notice of appeal was signed and dated December 4, 2008, and filed in the district court on December 8, 2008, well after the 30-day appeal period prescribed by NRAP 4(b). Therefore, we conclude that we lack jurisdiction to consider this appeal. Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (holding that “an untimely notice of appeal fails to vest jurisdiction in this court.”). Accordingly, we grant respondent’s motion, and we

ORDER this appeal DISMISSED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Catherine Cortez Masto/Ely
White Pine County Clerk
William James Irwin, Jr.