

IN THE SUPREME COURT OF THE STATE OF NEVADA

KARL WILLIAM SCHENKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53006

FILED

FEB 26 2009

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction initiated by the filing of a proper person notice of appeal. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

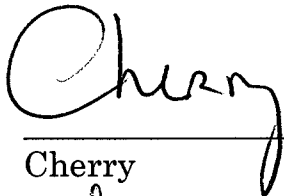
This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the judgment of conviction on November 14, 2008. Appellant's notice of appeal was due on December 15, 2008. See NRAP 4(b); Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996). Appellant's notice of appeal, however, was not filed in the district court until December 29, 2008, fourteen days beyond the relevant appeal period. "[A]n untimely notice of appeal fails to vest jurisdiction in this court." Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).


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 December 15, 2008, his notice of appeal would be deemed timely filed. 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). Because appellant signed his notice of appeal on December 14, 2008, this court directed the attorney general to obtain and transmit a copy of the notice of appeal log. If appellant did not use the

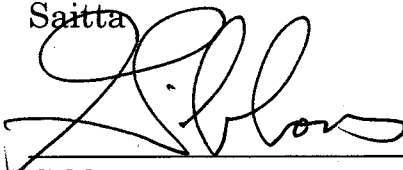
notice of appeal log, the attorney general was to inform this court whether appellant used any other logs. On February 12, 2009, the attorney general submitted a timely response. The attorney general states that appellant did not use the notice of appeal log and indicates that there is no record of when appellant mailed his notice of appeal.¹

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. Id. at 476-77, 835 P.2d at 13. Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to Kellogg. Therefore, the December 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.²


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

¹In a proper person document submitted in this court, appellant indicated that he handed the letter to a correctional officer and did not use any logs maintained by the prison.

²We have considered the proper person documents submitted in this matter, and we conclude that no relief is warranted for the reason set forth above.

cc: Hon. Janet J. Berry, District Judge
Karl William Schenker
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk