

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOBBY JO CUMMINGS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53071

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, pursuant to a guilty plea, of conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Our initial review of this appeal revealed a jurisdictional defect. Specifically, the notice of appeal appeared to be untimely. Accordingly, we ordered appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction.

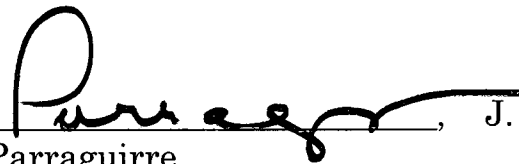
Appellant acknowledges that the notice of appeal was not timely filed. However, citing to Huebner v. State, 107 Nev. 328, 810 P.2d 1209 (1991), appellant argues that in exceptional cases this court has relaxed the rule regarding timeliness and urges this court to relax the rule in this instance in the interest of judicial economy.

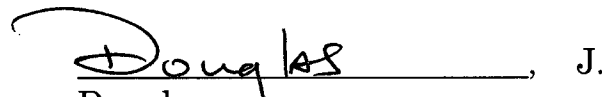
In Huebner, this court reinstated an appeal that had been dismissed as untimely after finding that due to the practice of the district court clerk it could not be determined whether the notice of appeal was timely received into custody of the district court clerk. Id. at 332. Unlike Huebner, it is clear 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 judgment of conviction was filed on December 8, 2008.

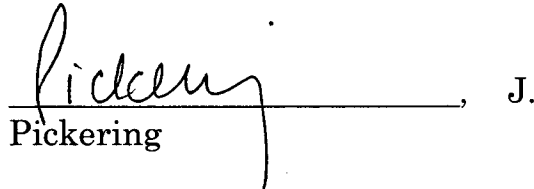
However, the notice of appeal was filed in the district court on January 8, 2009, one day after the 30-day appeal period prescribed by NRAP 4(b). Therefore, we conclude that we lack jurisdiction to consider this appeal. Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (holding that “an untimely notice of appeal fails to vest jurisdiction in this court.”).

Having considered the documents submitted in this appeal, we conclude we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.¹


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Anthony M. Goldstein
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk
Bobby Jo Cummings

¹We note that our decision does not leave appellant without a complete and adequate remedy. Appellant may obtain relief by filing a timely petition for a writ of habeas corpus in the district court alleging an appeal deprivation claim pursuant to this court’s holding in Lozada. 110 Nev. 349, 871 P.2d 944 (1994).