

IN THE SUPREME COURT OF THE STATE OF NEVADA

SERGIO CERVANTES RODRIGUES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53562

FILED

MAY 20 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. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

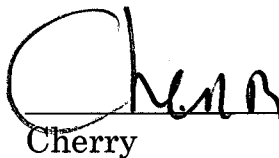
Our initial review of this appeal revealed a jurisdictional defect. Specifically, the notice of appeal appeared to be untimely. The judgment of conviction was entered on December 22, 2008. However, the notice of appeal was not filed until April 3, 2009, well after the expiration of the 30-day appeal period prescribed by NRAP 4(b). Because “an untimely notice of appeal fails to vest jurisdiction in this court,” Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994), we directed counsel for appellant to show cause why this appeal should not be dismissed for lack of jurisdiction.


In response, counsel explains that the notice of appeal was filed promptly after counsel learned that the judgment of conviction had been entered. According to counsel, the judgment of conviction was placed in the folder of one of counsel’s associates who appeared on behalf of appellant at sentencing and was identified as counsel for appellant in the judgment of conviction. Counsel did not receive a copy of the judgment of conviction and the associate did not discover the judgment in his folder at the district court until April 2009. Relying on NRCP 60(b), appellant


suggests his right to appeal should not be lost because of mistake, inadvertence, or excusable neglect and urges this court not to dismiss this appeal for lack of jurisdiction.

The NRCP do not apply in criminal cases or in appeals before this court. NRCP 1 (providing that NRCP govern district court proceedings in civil suits). Proceedings before this court are governed by the NRAP. Those rules and our prior decisions are clear: a notice of appeal must be filed in the district court within 30 days after entry of the judgment of conviction, NRAP 4(b)(1), and “an untimely notice of appeal fails to vest jurisdiction in this court,” Lozada, 110 Nev. at 352, 871 P.2d at 946. This court cannot extend the time to file a notice of appeal. NRAP 26(b). Because the notice of appeal was not timely filed in the district court, this court lacks jurisdiction over this appeal.¹ Accordingly, we

ORDER this appeal DISMISSED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

¹Appellant may be able to obtain relief and consideration of any direct appeal claims through a timely filed post-conviction petition for a writ of habeas corpus under NRS chapter 34. Because appellant failed to file a timely notice of appeal, a post-conviction petition must be filed within one year after entry of the judgment of conviction. See NRS 34.726; Dickerson v. State, 114 Nev. 1084, 967 P.2d 1132 (1998). We express no opinion as to the merits of any claims that may be raised in a post-conviction petition, whether any claims will be subject to procedural bars, or whether appellant may be able to overcome any applicable procedural bars.

cc: Hon. David B. Barker, District Judge
David Lee Phillips & Associates
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk
Sergio Cervantes Rodrigues

