

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH HUBLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53571

FILED

JUL 14 2009

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

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a “motion for sentence reconsideration.” Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

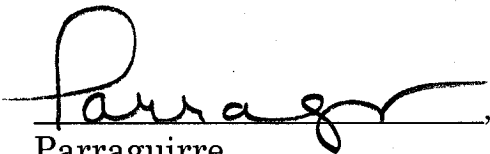
This court’s preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order denying appellant’s motion on March 3, 2009. Appellant’s notice of appeal was due on April 2, 2009. See NRAP 4(b); Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996). Appellant’s notice of appeal, however, was not filed in the district court until April 8, 2009, 6 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).

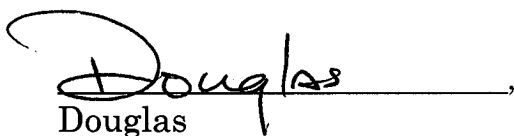
Under this court’s holding in Kellogg v. Journal Communications, if appellant delivered his notice of appeal to a prison official for mailing on or before April 2, 2009, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed “filed” when it is delivered to a prison official). Because it was not clear if the notice of appeal was delivered to

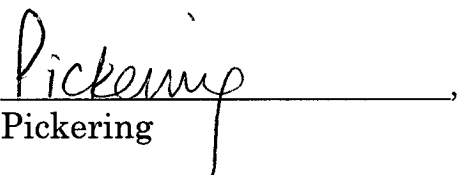
prison officials in a timely fashion, this court directed the attorney general to obtain and transmit a copy of the notice of appeal. If appellant did not use the notice of appeal log, the attorney general was to inform this court whether appellant used any other logs. On June 17, 2009, the attorney general submitted a timely response. The attorney general indicates that there is no record of when appellant mailed his notice of appeal.

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 April 8, 2009 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.¹

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

¹We dismiss as moot the request to voluntarily dismiss the appeal.

cc: Hon. Jackie Glass, District Judge
Joseph Hubler
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk