

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON DEMARIUS GREEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54169

FILED

OCT 06 2009

TRACEY K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying a motion to modify sentence. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

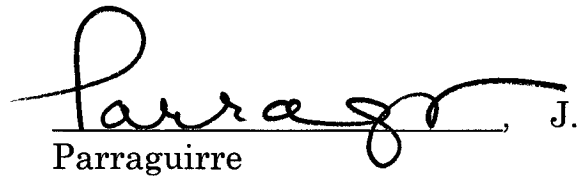
This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's motion on June 10, 2009. Appellant's notice of appeal was due on July 10, 2009 (a Friday). See NRAP 4(b); Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996). Appellant's notice of appeal, however, was not filed in the district court until July 13, 2009, 3 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).

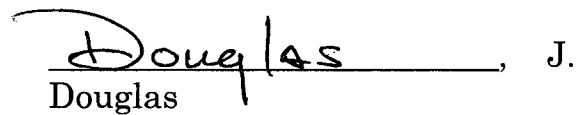
Under this court's holding in Kellogg v. Journal Communications, if appellant delivered his notice of appeal to a prison official for mailing on or before July 10, 2009, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official). Because appellant signed his notice of appeal on July 6, 2009,

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 September 8, 2009, the attorney general submitted a 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 July 13, 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.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Kathy A. Hardcastle, District Judge
Brandon Demarius Green
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk