

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONNIE MOORE, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54473

FILED

NOV 04 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 modification. Eighth Judicial District Court, Clark County; Jennifer Togliatti, 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 July 20, 2009. Appellant's notice of appeal was due on August 19, 2009 (a Thursday). 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 September 1, 2009, 13 days beyond the relevant appeal period.¹ "[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 August 19, 2009, his notice of appeal would

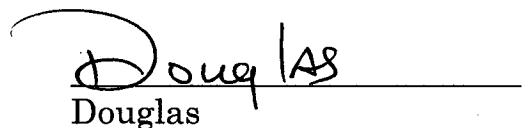
¹The notice of appeal contains a received stamp date of August 28, 2009. This date is likewise outside of the 30-day appeal period.

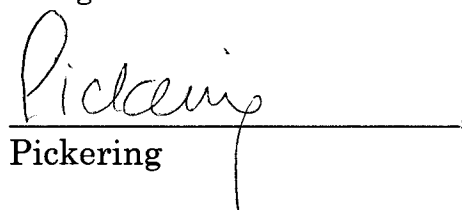
be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official). Because appellant signed his notice of appeal on August 10, 2009, this court directed the attorney general to obtain and transmit a copy of 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 October 12, 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. Although appellant used the legal mail log on July 17, 2009, the use of the log could not possibly have related to a notice of appeal that he did not sign until August 10, 2009.

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 September 1, 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. Jennifer Togliatti, District Judge
Ronnie Moore Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk