

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIUS CEASAR POLLARD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54519

**FILED**

DEC 23 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 appellant's post-conviction petition for a writ of habeas corpus. 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 petition on June 29, 2009, and the clerk of the district court served notice of entry of that order on August 4, 2009. Appellant's notice of appeal was due on September 8, 2009 (a Tuesday). See NRS 34.575 (providing that an appeal may be filed from an order denying a petition for a writ of habeas corpus within 30 days after service by the district court of written notice of entry of the order); NRAP 26(a) (providing that if the last day of the designated time period falls on a Saturday, Sunday, or nonjudicial day, the period shall be extended until the end of the next day which is not a Saturday, Sunday, or nonjudicial day); NRAP 26(c) ("When a party is required or permitted to act within a

prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period.”). Appellant’s notice of appeal, however, was not filed in the district court until September 9, 2009, one day 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).

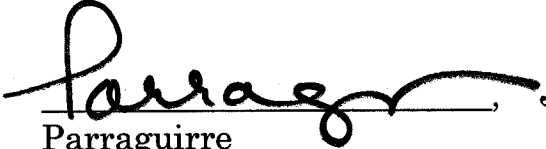
Under this court’s holding in Kellogg v. Journal Communications, if appellant delivered his notice of appeal to a prison official for mailing on or before September 8, 2009, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed “filed” when it is delivered to a prison official). Because appellant signed his notice of appeal on September 4, 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 November 30, 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 September 9, 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.

  
\_\_\_\_\_, C.J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Jackie Glass, District Judge  
Julius Ceasar Pollard  
Attorney General Catherine Cortez Masto/Las Vegas  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk