

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES RAY ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55029

FILED

FEB 03 2010

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of felony driving under the influence. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The notice of appeal was not filed until December 3, 2009, more than 30 days after the judgment of conviction was entered on October 28, 2009. Appellant's counsel has failed to respond to the order to show cause or provide this court with documentation that appellant delivered the notice of appeal to a prison official within the relevant appeal period. See Kellogg v. Journal Communications, 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (a notice of appeal is deemed "filed" when it is delivered to a prison official). Based on the documents filed in this appeal, we conclude that the notice of appeal was not timely filed, NRAP 4(b)(1)(A), and we lack jurisdiction. Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) ("[A]n untimely notice of appeal fails to vest jurisdiction in this court."). We therefore

ORDER this appeal DISMISSED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Douglas K. Fermoile
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk
James Ray Anderson