

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY R. GAINES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55047

FILED

JAN 07 2010

ORDER DISMISSING APPEAL

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
[Signature]
DEPUTY CLERK

This is an appeal from a “motion to modify sentence harsh cruel and unusual punishment.” Eighth Judicial District Court, Clark County; James M. Bixler, Judge. Because a motion to modify sentence has neither been filed nor denied in district court case number C253009, we conclude we lack jurisdiction to consider this appeal. See NRS 177.015(3) (providing that only an aggrieved party may appeal from a final judgment of the district court). To the extent appellant appeals from the judgment of conviction, the notice of appeal was not filed until December 4, 2009, more than 30 days after the judgment of conviction was entered on October 16, 2009. Accordingly, the notice of appeal was not timely filed, NRAP 4(b), 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.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. James M. Bixler, District Judge
Anthony M. Goldstein
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk
Anthony R. Gaines