

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDWARD PROCTOR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55476

**FILED**

**MAY 07 2010**

TRACIE 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 post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant's February 17, 2010 notice of appeal was untimely filed as it was filed more than 33 days after notice of entry of the district court's order was served.<sup>1</sup> However, the notice of appeal was dated on February 11, 2010. If appellant had delivered his notice of appeal to a prison official for mailing on or before February 16, 2010, his notice of appeal would be deemed timely filed. Kellogg v. Journal Communications, 108 Nev. 474, 477, 835 P.2d 12, 13 (1992).

Because appellant signed his notice of appeal on February 11, 2010, this court directed the attorney general to obtain and transmit a copy of the notice of appeal log and/or legal mail log. On April 15, 2010, the attorney general submitted a timely response. The attorney general

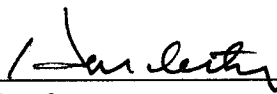
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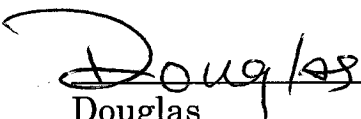
<sup>1</sup>The notice of appeal was due on February 16, 2010. See NRS 34.575; NRAP 26(a); NRAP 26(c).


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 February 17, 2010 filing date of the notice of appeal in the district court controls. Because appellant's notice of appeal was untimely filed, we conclude that we lack jurisdiction over this appeal, Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994), and we

ORDER this appeal DISMISSED.

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

  
\_\_\_\_\_, J.  
Douglas

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

cc: Hon. Valorie Vega, District Judge  
James Edward Proctor  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk