

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONTAE ANTWON SCOTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56524

FILED

NOV 05 2010

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 to withdraw a guilty plea. Eighth Judicial District Court, Clark County; Elissa F. Cadish, 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 June 29, 2010. Appellant's notice of appeal was due on July 29, 2010. See NRAP 4(b); Edwards v. State, 112 Nev. 704, 709, 918 P.2d 321, 325 (1996). Appellant's notice of appeal, however, was not filed in the district court until August 2, 2010, four days 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 July 29, 2010, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992). Because

appellant signed his notice of appeal on July 25, 2010, this court directed the attorney general to obtain and transmit a copy of the notice-of-appeal log. If appellant did not use the notice-of-appeal log, the attorney general was to inform this court whether appellant used any other logs.

The attorney general submitted a timely response. Although appellant used the notice-of-appeal log on July 1, 2010, the notice-of-appeal log indicates that the legal document in question was a reply.¹ Further, as noted above, the notice of appeal was signed by appellant on July 25, 2010, 24 days after the log entry.² No further entries were found for appellant during the appeal period. The documents maintained by the prison do not indicate that appellant delivered his notice of appeal to prison officials in a timely fashion.

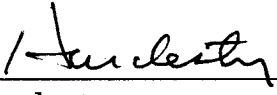
This court's rules and decision in Kellogg contemplate that the date of delivery of the notice of appeal to a prison official will be determined by the date recorded in the logs maintained by the prison. Id. at 476-77, 835 P.2d at 13; NRAP 4(d). Here, there is no record of the date appellant delivered his notice of appeal to a prison official pursuant to Kellogg. Therefore, the August 2, 2010, filing date of the notice of appeal

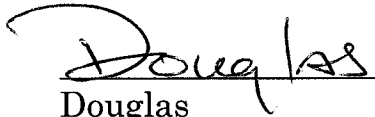
¹A reply was filed in the district court on July 8, 2010.

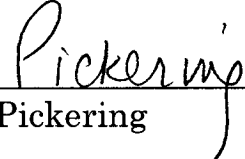
²Appellant's affirmation document was also dated July 25, 2010. An envelope addressed to the clerk of the courts, which was included with the notice of appeal documents, indicates that the envelope was postmarked July 30, 2010.

in the district court controls. Because appellant's notice of appeal was untimely filed, we

ORDER this appeal DISMISSED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Elissa F. Cadish, District Judge
Eighth District Court Clerk
Dontae Antwon Scott
Attorney General/Carson City
Clark County District Attorney