

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRELL R. ESCALANTI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57399

DARRELL R. ESCALANTI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57400

FILED

FEB 18 2011

ORDER DISMISSING APPEALS

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

These are proper person appeals from orders of the district court denying appellant's motion to correct illegal sentence and enforcement of plea agreement filed in two district court cases. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. We consolidate these appeals for disposition.¹ NRAP 3(b).

This court's preliminary review of these appeals revealed a potential jurisdictional defect. Specifically, the district court entered the

¹This court received a motion to consolidate the appeals on February 3, 2011. We direct the clerk of this court to file the February 3, 2011 motion in each appeal, and we grant the motion to consolidate the appeals.

order denying appellant's motion on November 12, 2010. Appellant's notice of appeal was due on December 13, 2010. See NRAP 4(b); NRAP 26(a). Appellant's notice of appeal, however, was not filed in the district court until December 20, 2010, seven 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).

NRAP 4(d) provides that for purposes of determining timeliness, a notice of appeal will be deemed timely if it is delivered to a prison official for mailing on or before the last day of the filing period. See also Kellogg v. Journal Communications, 108 Nev. 474, 477, 835 P.2d 12, 13 (1992). Because appellant signed his notice of appeal on December 10, 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. On February 1, 2011, the attorney general submitted a response. The attorney general indicates that there is no record of when appellant mailed his notice of appeal as he did not use the notice-of-appeal log or the legal-mail log.

To take advantage of NRAP 4(d), an inmate must use the notice-of-appeal log or some other system designed for legal mail. Because appellant did not use the logs maintained by the prison, there is no record of when appellant delivered his notice of appeal to prison officials. Thus,

the December 20, 2010 filing date of the notice of appeal controls. Because appellant's notice of appeal was untimely filed, we

ORDER these appeals DISMISSED.²

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. J. Michael Memeo, District Judge
Darrell R. Escalanti
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.