

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH DRUMMOND,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 58398

FILED

AUG 05 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *H. Anderson*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's petition on April 5, 2011, and the clerk of the district court served notice of entry of that order on April 6, 2011. Appellant's notice of appeal was due on May 9, 2011. See NRS 34.575; NRAP 26(c). Appellant's notice of appeal, however, was not filed in the district court until May 20, 2011, eleven 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).

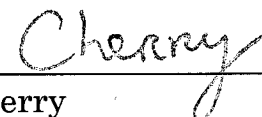
If appellant delivered his notice of appeal to a prison official for mailing on or before May 9, 2011, his notice of appeal would be deemed timely filed. NRAP 4(d); Kellogg v. Journal Communications, 108 Nev. 474, 477, 835 P.2d 12, 13 (1992). To take advantage of NRAP 4(d), an inmate must use the notice-of-appeal log or some other system designed for legal mail. Because appellant signed his notice of appeal on May 6,


2011, 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 of this fact and whether appellant used any other logs. On July 7, 2011, the attorney general submitted a timely response.

After reviewing the documents provided by the attorney general, we conclude that there is no record of when appellant mailed his notice of appeal. Appellant did not use the notice-of-appeal log. The legal-mail log indicates legal mail was sent on May 6, 2011, but not to the clerk of the district court.¹ It appears that appellant used the legal-mail log for legal mail sent to the clerk of the district court on May 16, 2011, seven days beyond the appeal period. Thus, the May 20, 2011 filing date controls. Because appellant's notice of appeal was untimely filed, we

ORDER this appeal DISMISSED.


_____, C.J.
Douglas


_____, J.
Cherry


_____, J.
Pickering

¹The log indicates legal mail was sent to an attorney in Henderson, Nevada.

cc: Hon. Dan L. Papez, District Judge
Keith Drummond
Attorney General/Ely
White Pine County Clerk