

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS ARTURO CEDANO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58556

FILED

FEB 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order denying a motion to vacate judgment of conviction. Eighth Judicial District Court, Clark County; David B. Barker, 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 May 10, 2011. Appellant's notice of appeal was due on June 9, 2011. See NRAP 4(b); Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996). Appellant's notice of appeal, however, was not filed in the district court until June 10, 2011, one day 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 June 9, 2011, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding

that a notice of appeal is deemed “filed” when it is delivered to a prison official); see also NRAP 4(d) (“If an inmate confined in an institution files a notice of appeal . . . the notice is timely if it is delivered to a prison official for mailing on or before the last day for filing. If the institution has a notice-of-appeal log or another system designed for legal mail, the inmate must use that log or system to receive the benefit of this Rule.”). Because appellant signed his notice of appeal on June 7, 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 whether appellant used any other logs. The attorney general’s response indicates that there is no record of when appellant delivered his notice of appeal to prison officials.

This court’s decision in Kellogg and NRAP 4(d) contemplate that the date of delivery of the notice of appeal to a prison official will be determined by the date recorded in the prison log. Kellogg, 108 Nev. 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 and NRAP 4(d), and the documents before this court indicate that appellant did not use the log maintained at his facility. Therefore, the June 10, 2011 filing date of the notice of appeal in the district court controls. Because appellant’s notice of appeal was untimely filed, we lack jurisdiction over this appeal.

Further, an additional jurisdictional defect presents itself in this appeal. No statute or court rule permits an appeal from an order

denying a motion to vacate judgment of conviction. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we

ORDER this appeal DISMISSED.¹

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. David B. Barker, District Judge
Carlos Arturo Cedano
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹We have considered the proper person documents submitted in this matter, and we conclude that no relief is warranted for the reason set forth above.