

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES DAVID OFELDT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59811

FILED

FEB 27 2012

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

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a post-conviction motion to withdraw a guilty plea. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. Because the notice of appeal was filed on December 9, 2011, seven days after the expiration of the 30-day appeal period prescribed by NRAP 4(b), we directed appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction. In response, counsel asserts that the appeal was timely filed because it was filed within 33 days of mailing of the notice of entry of order, as directed in the notice of entry of order. However, because no "specific appeal period has been provided by statute" for appealing an order denying a motion to withdraw a guilty plea, the time period for filing the notice of appeal started running upon entry of the order denying the motion, not upon service of the notice of entry of order. See Edwards v. State, 112 Nev. 704, 709, 918 P.2d 321, 325 (1996). Because the notice of entry of order is irrelevant to an order denying a motion to withdraw a guilty plea, it cannot extend the time to file the notice of appeal, and we lack jurisdiction. See Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) ("[A]n untimely notice of appeal fails to vest jurisdiction in this

court.”), Jordan v. Director, Dep’t of Prisons, 101 Nev. 146, 148, 696 P.2d 998, 999 (1985) (holding that court lacked jurisdiction to consider appeal filed 18 days after written notice of entry of order because the statute authorizing the appeal did not contain a provision relating to service of written notice of entry of the order), overruled by statute; see also, NRAP 26(b)(1)(A) (a “court may not extend the time to file a notice of appeal except as provided in [NRAP] 4(c)”). Therefore, we

ORDER this appeal DISMISSED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Steven P. Elliott, District Judge
Ian E. Silverberg
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk
James David Ofeldt