

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY LOUIS SYKES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59863

FILED

MAY 09 2012

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of battery with intent to commit sexual assault. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

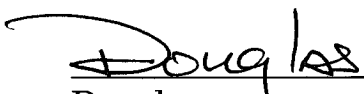
Because the notice of appeal was filed in the district court five days after the 30-day appeal period expired, see NRAP 4(b), we ordered appellant to show cause why the appeal should not be dismissed for lack of jurisdiction, see Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) (“[A]n untimely notice of appeal fails to vest jurisdiction in this court.”). We specifically observed that the proper person notice of appeal appeared to have been signed within the appeal period, on December 8, 2011, and that if appellant had delivered the notice of appeal to a prison official for mailing on or before December 9, 2011, his notice of appeal would be deemed timely filed. Kellogg v. Journal Communications, 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that notice of appeal is deemed “filed” when it is delivered to a prison official).


In response, counsel for appellant informs this court that appellant did not use the appeal log at the institution where he is incarcerated, but that he did send a letter to the district court on

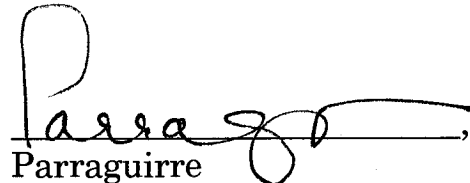
December 12, 2011. Counsel argues that we should allow this appeal to proceed in the interests of justice. We cannot do so. See NRAP 26(b)(1)(A) (providing that court cannot enlarge time for filing notice of appeal).

Under Kellogg and NRAP 4(d), an inmate must use the institution's notice-of-appeal log or another system designed for legal mail if the institution does not have such a log in order to receive the benefit of the prison mailbox rule. Here, appellant failed to use the notice-of-appeal log. And the information indicating that he sent a letter to the district court on December 12 is unavailing because he did not use the notice-of-appeal log and the letter was sent after the appeal period had expired. "The filing of a timely notice of appeal is a fundamental jurisdictional requirement; without it, this court never obtains jurisdiction over an appeal and has no power to consider the issues raised" Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1134 (1998). Because appellant did not comply with this jurisdictional requirement, we

ORDER this appeal DISMISSED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk
Larry Louis Sykes