

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN ANTHONY ROBERTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60847

FILED

JUL 26 2012

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

ORDER DISMISSING APPEAL

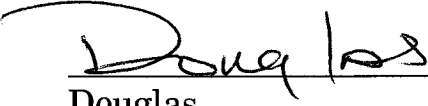
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of mid-level trafficking in a schedule 1 controlled substance. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge. The judgment of conviction was filed on March 28, 2012. To be timely, the notice of appeal had to be filed on or before April 27, 2012. NRAP 4(b)(1)(A). Because the notice of appeal was not filed until May 7, 2012, we ordered appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction.

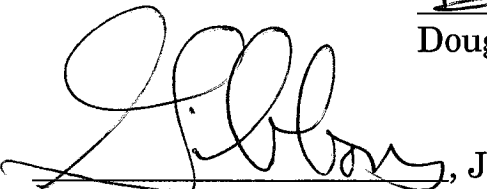
In response, counsel informs this court that he received correspondence from the district court on April 8, 2012, which included a copy of appellant's proper person notice of appeal dated April 1, 2012, and a copy of a letter from the district court clerk to appellant informing him that the clerk had received the correspondence dated April 1, 2012, and had forwarded a copy to his counsel. Counsel informs this court that, upon receipt of the correspondence, he moved to withdraw in the district court so that appellant could file his notice of appeal in proper person. On April 30, 2012, the district court granted counsel's motion to withdraw and directed counsel to file a notice of appeal on behalf of appellant. Counsel subsequently filed the notice of appeal on May 7, 2012. Counsel has

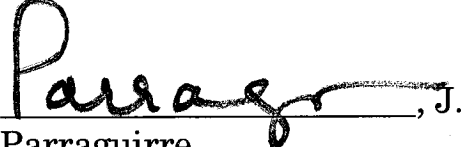
provided this court with a copy of the correspondence from the district court clerk, his motion to withdraw, and the district court order granting his motion to withdraw.

We lack jurisdiction because the notice of appeal was not timely filed in the district court. 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.”). Therefore, we

ORDER this appeal DISMISSED.¹


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

¹Our decision does not leave appellant without an adequate remedy. We note that the district court clerk must “keep an accurate record of the date of receipt of every document submitted to the clerk, regardless of whether the document is in the appropriate form,” Huebner v. State, 107 Nev. 328, 330, 810 P.2d 1209, 1211 (1991), has a ministerial duty to accept and file documents unless given specific directions from the district court to the contrary, Bowman v. District Court, 102 Nev. 474, 478, 728 P.2d 433, 435 (1986), and must file a notice of appeal despite any perceived deficiencies and transmit the notice of appeal to this court, NRAP 3(a)(3). Further, counsel must file a notice of appeal on behalf of his client “when the client’s desire to challenge the conviction or sentence can be reasonably inferred from the totality of the circumstances.” Toston v. State, 127 Nev. ___, ___, 267 P.3d 795, 801 (2011). Based on the documents submitted to this court, it appears that appellant may have a valid appeal deprivation claim. Appellant may raise this claim by filing a timely post-conviction petition for a writ of habeas corpus in the district court alleging an appeal deprivation claim pursuant to NRAP 4(c). See NRS 34.726(1) (post-conviction petition for a writ of habeas corpus must be filed within 1 year of entry of the judgment of conviction).

cc: Hon. Robert W. Lane, District Judge
Michael P. Printy
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk
Brian Anthony Roberts