

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW ERIC DONEY, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 61862

**FILED**

DEC 17 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order revoking probation and imposing sentence. Seventh Judicial District Court, Eureka County; Dan L. Papez, Judge.

Because the notice of appeal was filed four days after the expiration of the 30-day appeal period prescribed by NRAP 4(b), we ordered appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction. In response, appellant's counsel asserts that this court should deem the notice of appeal timely filed pursuant to Kellogg v. Journal Communications, 108 Nev. 474, 835 P.2d 12 (1992) because appellant delivered his request for an appeal to prison authorities for filing within the relevant appeal period. Counsel's reliance on Kellogg is misplaced because appellant sent the document to his counsel rather than the district court, the document was not a notice of appeal, and the notice of appeal was filed by counsel. Because the notice of appeal was not

timely filed, we lack jurisdiction, see Lozada v. State, 110 Nev. 349, 352  
871 P.2d 944, 946 (1994), and we

ORDER this appeal DISMISSED.

Saitta, J.  
Saitta

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. Dan L. Papez, District Judge  
State Public Defender/Ely  
State Public Defender/Carson City  
Attorney General/Carson City  
Eureka County District Attorney  
Eureka County Clerk  
Matthew Eric Doney, Jr.