

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO LINARES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61992

FILED

JAN 24 2013

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order denying a motion to modify sentence. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

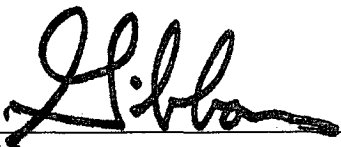
This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's motion on September 11, 2012. Appellant's notice of appeal was due on October 11, 2012. See NRAP 4(b); Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996). Appellant's notice of appeal, however, was not filed in the district court until October 25, 2012, fourteen days 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 October 11, 2012, 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). Because appellant signed his notice of appeal on October

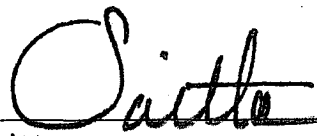
11, 2012, this court directed the attorney general to obtain and transmit a copy of the notice of appeal. If appellant did not use the notice of appeal log, the attorney general was to inform this court whether appellant used any other logs. On December 7, 2012, the attorney general submitted a timely response. The attorney general indicates that there is no record of when appellant mailed his notice of appeal.

This court's decision in Kellogg contemplates and NRAP 4(d) requires that the date of delivery of the notice of appeal to a prison official will be determined by the date recorded in the log maintained by the prison. Id. 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. Therefore, the October 25, 2012 filing date of the notice of appeal in the district court controls. Because appellant's notice of appeal was untimely filed, we

ORDER this appeal DISMISSED.¹


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

¹We have received appellant's proper person letter regarding his ignorance of the notice of appeal log. However, as stated above, delivery is determined by the use of the log maintained by the prison.

cc: Hon. Valerie Adair, District Judge
Julio Linares
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk