


IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE VONTRESS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62057

FILED

MAR 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Appellant, representing himself at trial, was found guilty of robbery with a deadly weapon, burglary while in possession of a firearm, battery with the intent to commit a crime (robbery), and battery with the use of a deadly weapon. Prior to sentencing, on February 9, 2012, appellant filed a motion for a new trial. The district court denied the motion at the conclusion of a hearing on February 28, 2012. No written order was entered memorializing this decision. At sentencing, the district court adjudicated appellant a violent habitual criminal for two counts and a small habitual criminal for two counts and sentenced appellant to serve two consecutive terms of life with the possibility of parole after 10 years; and terms totaling 10 to 40 years. The judgment of conviction was entered on June 15, 2012, and a notice of appeal should have been filed on or before July 16, 2012.

Appellant filed a late notice of appeal on November 1, 2012, designating the judgment of conviction, and a second late notice of appeal on November 14, 2012, designating the denial of the presentence motion

for a new trial. Because an untimely notice of appeal fails to vest jurisdiction in this court, *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994), we dismissed the appeal.¹ *Vontress v. State*, Docket No. 62057 (Order Dismissing Appeal, March 14, 2013). Appellant filed a proper person petition for rehearing, in which he argued that the denial of his motion for a new trial based on newly discovered evidence should have tolled the time to file a direct appeal because the district court had not entered a written order denying the motion. This court, relying upon appellant's representation that he had submitted a motion for a new trial based on newly discovered evidence, granted the petition for rehearing, reinstated the appeal, and remanded the matter to the district court for the purpose of appointing appellate counsel. *Vontress v. State*, Docket No. 62057 (Order Granting Petition for Rehearing, Reinstating Appeal, and Remanding for the Appointment of Counsel, May 15, 2013). Since then counsel has been appointed and briefing is in progress.

The State has filed a motion to dismiss the notice of appeal as untimely. The State argues that appellant provided no proof that he submitted a timely notice of appeal and that to the extent that appellant argued that an intent to appeal could be gleaned from his request for transcripts, a request for transcripts is not sufficient to indicate a desire to file a notice of appeal. The State further argues that the time to file the notice of appeal was not tolled in the instant case because the motion for a new trial was not based upon newly discovered evidence and therefore was untimely filed. Appellant submitted a proper person motion for

¹This court further informed appellant that there was no independent appeal from an order denying a presentence decision to deny a motion for a new trial. See NRS 177.045.

clarification reiterating his argument that the motion for a new trial was based upon newly discovered evidence and as such should toll the time to file a notice of appeal pursuant to NRAP 4(b)(3)(B), NRAP 4(b)(4).²

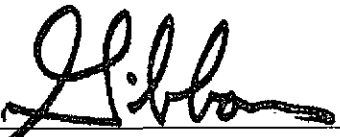
NRAP 4(b)(1)(A) provides that an appeal from a judgment of conviction must be filed within 30 days after entry of the judgment of conviction. NRAP 4(b)(3)(A) extends the time for filing a notice of appeal if a *timely* motion for a new trial based on a ground other than newly discovered evidence has been filed. Similarly, NRAP 4(b)(3)(B) provides that a motion for a new trial based on newly discovered evidence will “extend the time for appeal from a judgment of conviction if the motion is made before or within 30 days after entry of the judgment.” Under these provisions, the time to file the notice of appeal from the judgment of conviction is extended to allow an appeal to be filed within 30 days after entry of an order denying the motion. NRAP 4(b)(3)(A), (B). An order is entered when it is signed by the judge and filed with the clerk. NRAP 4(b)(4).

We conclude that the provisions of NRAP 4(b)(3) do not apply in this case. Appellant’s motion for a new trial was based on grounds other than newly discovered evidence. Thus, the tolling provision of NRAP 4(b)(3)(A) controls. Because the motion for a new trial was untimely filed after the 7-day time limit for a motion for a new trial based on grounds other than newly discovered evidence, *see* NRS 176.515(4), the motion did not affect the time to file a notice of appeal from the judgment

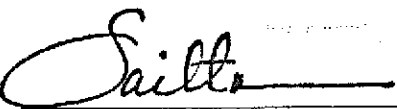
²We direct the clerk of this court to file the proper person motion received on January 30, 2014.

of conviction in the instant case. Thus, the notice of appeal was untimely, and we grant the State's motion. Accordingly, we

ORDER this appeal DISMISSED.³


_____, C.J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. James M. Bixler, District Judge
Sandra L. Stewart
George Vontress
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³In light of our disposition of this appeal, we deny as moot the State's request to stay the briefing schedule. Appellant has submitted several documents in proper person: a motion seeking leave of court to file in proper person, a motion to discharge appointed counsel and signed statement of consent, a supplement to the opening brief, and a letter regarding the power of a single justice to entertain motions. In light of our disposition of this appeal and because appellant is represented by counsel, we decline to file these documents. NRAP 46(b).