

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUSTAVO ALVIZAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65464

FILED

JUL 23 2014

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

ORDER DISMISSING APPEAL

This is a proper person appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

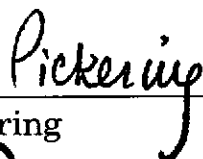
This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the judgment of conviction on January 14, 2014. Appellant's notice of appeal was due on February 13, 2014 (a Thursday). See NRAP 4(b); *Edwards v. State*, 112 Nev. 704, 918 P.2d 321 (1996). Appellant's notice of appeal, however, was not filed in the district court until April 8, 2014, almost two months 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).

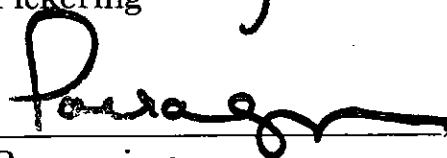
Under this court's holding in *Kellogg v. Journal Communications*, if appellant delivered his notice of appeal to a prison official for mailing on or before February 13, 2014, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official). Likewise, NRAP 4(d) provides that a notice of appeal "is timely if it is delivered to a prison official for mailing on or before the last


day for filing.” NRAP 4(d) further provides that when the prison has a notice-of-appeal log or another system designed for legal mail, the prisoner must use the logs to receive the benefit of this rule. Because appellant signed his notice of appeal on February 4, 2014, this court directed the attorney general to obtain and transmit a copy of the notice-of-appeal log. 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 May 8, 2014, the attorney general submitted a timely response. The attorney general indicates that the prison maintains both a notice-of-appeal log and a legal mail log.

It does not appear from the logs maintained by the prison that appellant delivered his notice of appeal to prison officials in a timely fashion. Appellant did not use the notice-of-appeal log and used the legal mail log on April 3, 2014, well after the time for filing a notice of appeal. Therefore, the April 8, 2014 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.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Janet J. Berry, District Judge
Gustavo Alvizar
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk