

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD D. ECKERT,
Appellant,
vs.
RENEE BAKER, WARDEN, ELY STATE
PRISON,
Respondent.

No. 70268

FILED

AUG 26 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from an order denying appellant's postconviction petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

The district court entered the order denying appellant's petition on February 9, 2016, and the clerk of the district court served the corrected notice of entry of that order on March 18, 2016. Appellant's notice of appeal was due on April 20, 2016. See NRS 34.575 (providing that an appeal may be filed from an order denying a petition for a writ of habeas corpus within 30 days after service by the district court of written notice of entry of the order). Appellant's notice of appeal, however, was not filed in the district court until April 25, 2016, five 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). However, appellant signed his notice of appeal on April 18, 2016. Because it appeared that appellant may have delivered his notice of appeal to a prison official within the appeal period, this court

directed the Attorney General to obtain and transmit a certified copy of the notice of appeal log or other log maintained by the prison.¹ The Attorney General has responded and provides both the Notice of Appeal Log and the Outgoing Legal Mail Log. The Notice of Appeal Log does not reflect any entry of appellant's name, but the Outgoing Legal Mail Log shows four entries: two on April 7, 2016 (prior to the date that appellant signed his notice of appeal), addressed to the Seventh Judicial District Court and to the Attorney General; and two on April 21, 2016 (one day after the expiration of the 30-day time limit for a timely notice of appeal), addressed to the Attorney General and to the White Pine County Clerk. Because it appears from the prison mail logs that appellant did not file a timely notice of appeal, we

ORDER this appeal DISMISSED.

Cherry, J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

¹Nevada Department of Corrections Administrative Regulation 722.07(1) provides that "[e]ach institution and facility will maintain a permanent Notice of Appeals Log."

cc: Hon. Gary Fairman, District Judge
Edward D. Eckert
Attorney General/Carson City
White Pine County District Attorney
Attorney General/Ely
White Pine County Clerk