

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZACKERY ALLEN CRABTREE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71716

**FILED**

JAN 06 2017

ORDER DISMISSING APPEAL

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the judgment of conviction on September 27, 2016. Appellant's notice of appeal was due on October 27, 2016. 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 November 3, 2016, seven 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).

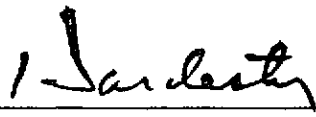
Under this court's holding in *Kellogg v. Journal Communications*, if appellant delivered his notice of appeal to a prison official for mailing on or before October 27, 2016, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official). Because appellant signed his notice of appeal on October 27, 2016, 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 December 15, 2016, the attorney

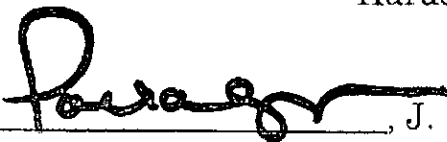
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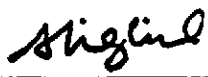
general submitted a timely response. The attorney general indicates that there is no record of when appellant mailed his notice of appeal.

This court's decision in *Kellogg* contemplates that the date of delivery of the notice of appeal to a prison official will be determined by the date recorded in the prison mail log. *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 pursuant to *Kellogg*. Therefore, the November 3, 2016, 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.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Stiglich

cc: Hon. Kimberly A. Wanker, District Judge  
Zackery Allen Crabtree  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk