

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN ELVIN TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71616

FILED

APR 11 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

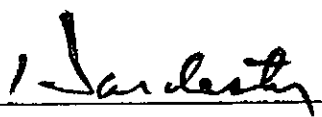
ORDER DISMISSING APPEAL


On December 9, 2016, this court directed the attorney general to obtain and transmit to this court the notice of appeal log or other log maintained by the prison to confirm whether appellant's notice of appeal from a judgment of conviction was timely delivered to a prison official. *Kellogg v. Journal Communications*, 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); *see also* NRAP 4(d). The district court entered the judgment of conviction on September 12, 2016. Appellant's notice of appeal was due on October 12, 2016. *See* NRAP 4(b), *Edwards v. State*, 112 Nev. 704, 709, 918 P.2d 321, 325 (1996). Appellant signed the notice of appeal on September 30, 2016. Appellant's notice of appeal, however, was not filed in the district court until October 24, 2016, twelve 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).

The attorney general has filed a motion for an extension of time to respond to our order; appellant opposes the motion. Cause appearing, the motion is granted. The clerk of this court shall file the response received on January 10, 2017.

The attorney general informs this court that neither the notice of appeal log nor the prison's brass slips reflecting requests for postage show any entries made by or on behalf of appellant from September 1, 2016, through October 31, 2016. It is therefore impossible to determine when appellant mailed his notice of appeal to the district court. Appellant has also responded, and claims that the prison has been improperly returning his outgoing legal mail to him. He provides this court a copy of a grievance dated August 28, 2016, complaining that his notice of appeal was held for over 48 hours. However, this document does not demonstrate that he mailed his notice of appeal in a timely manner, because he was sentenced on August 31, 2016, and the judgment of conviction he is appealing from was entered September 12, 2016. Accordingly, we conclude that the notice of appeal was untimely filed. We therefore lack jurisdiction, and we

ORDER this appeal DISMISSED.¹


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich

¹To the extent they seek specific relief, we deny as moot appellant's motions filed in this appeal; we take no action on documents not seeking relief.

cc: Hon. Douglas Smith, District Judge
John Elvin Turner
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk