

IN THE SUPREME COURT OF THE STATE OF NEVADA

FAUSTINO HECTOR SALITRERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72285

FILED

APR 28 2017

ELIZABETH J. BROWN
CLERK OF THE SUPREME COURT
BY *Amilca*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the judgment of conviction on December 21, 2016. Appellant's notice of appeal was due on January 20, 2017. *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 January 25, 2017, 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).

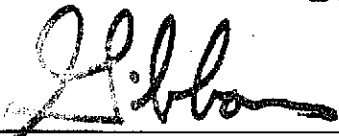
Under this court's holding in *Kellogg v. Journal Communications*, if appellant delivered his notice of appeal to a prison official for mailing on or before January 20, 2017, his notice of appeal would be deemed timely filed. 108 Nev. 474, 477, 835 P.2d 12, 13 (1992) (holding that a notice of appeal is deemed "filed" when it is delivered to a prison official). Because appellant signed his notice of appeal on January 18, 2017, 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

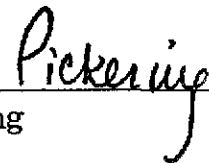
appeal log, the attorney general was to inform this court whether appellant used any other logs. On April 10, 2017, the attorney general submitted a timely response. The attorney general indicates that there is no record of when appellant mailed his notice of appeal.

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 January 25, 2017, 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.
Douglas


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Scott N. Freeman, District Judge
Faustino Hector Salitrero
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk