

IN THE SUPREME COURT OF THE STATE OF NEVADA

YVONNE MARIE ILLINGWORTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72346

FILED

AUG 18 2017

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

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order denying appellant's postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the order denying appellant's petition on December 6, 2016, and the clerk of the district court served notice of entry of that order on December 28, 2016. Appellant's notice of appeal was due on January 30, 2017. 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); NRAP 26(a) (providing that if the last day of the designated time period falls on a Saturday, Sunday, or nonjudicial day, the period shall be extended until the end of the next day

which is not a Saturday, Sunday, or nonjudicial day); NRAP 26(c) (“When a party is required or permitted to act within a prescribed period after a paper is served on that party, 3 calendar days are added to the prescribed period.”). Appellant’s notice of appeal, however, was not filed in the district court until February 7, 2017, eight 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 her notice of appeal to a prison official for mailing on or before January 30, 2017, her 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 her notice of appeal on January 23, 2017, this court directed the attorney general to obtain and transmit a copy of the notice of appeal. 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 June 30, 2017, the attorney general filed motions for extension of time to file the response to our order. We grant the motions. See NRAP 26(b)(1)(A). The clerk of this court shall file the response received via E-Flex on July 12, 2017. In its response, the attorney general indicates that appellant signed the notice of appeal log on February 2, 2017.

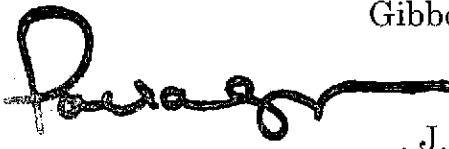
This court’s decision in *Kellogg* contemplates that the date of delivery of the notice of appeal to a prison official will be determined by the date recorded in the prison mail log. *Id.* at 476-77, 835 P.2d at 13. Therefore, the February 2, 2017, date that appellant signed the notice of

appeal log controls. Because appellant's notice of appeal was untimely filed,
we

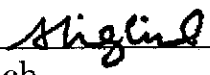
ORDER this appeal DISMISSED.



Gibbons J.



Parraguirre, J.



Stiglich, J.

cc: Hon. Elliott A. Sattler, District Judge
Yvonne Marie Illingworth
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk