

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARRET JAMES REUBEN VIGIL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73222

FILED

AUG 18 2017

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

ORDER DISMISSING APPEAL


This is an appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.


This court's preliminary review of this appeal revealed a potential jurisdictional defect. Specifically, the district court entered the judgment of conviction on April 6, 2017. Appellant's notice of appeal was due on May 8, 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 May 30, 2017, well 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 May 8, 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 May 1, 2017, this court directed counsel for appellant to obtain and transmit a copy of the notice of appeal log. If appellant did not use the notice of appeal log, counsel was to inform this court whether appellant used any other logs.

Appellant's counsel has filed a response in which counsel represents that appellant has been consistently housed in the Washoe County Jail, which does not keep any records or logs of outgoing prisoner mail. 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 May 30, 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.
Gibbons


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Hon. Janet J. Berry, District Judge
Dennis A. Cameron
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk