

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE AZUCENA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74483

**FILED**

FEB 26 2018

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

*ORDER DISMISSING APPEAL*

This is a direct appeal from a judgment of conviction entered pursuant to a jury verdict. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.


On December 15, 2017, this court issued an order directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the notice of appeal was untimely filed. The judgment of conviction was entered on October 10, 2017; accordingly, the notice of appeal was due by November 9, 2017. *See* NRAP 4(b)(1). The notice of appeal was filed on November 12, 2017. Appellant has filed a response to the order to show cause and respondent has filed a reply.


In his response, appellant concedes that his notice of appeal was untimely filed, but requests that this court allow this appeal to proceed because the e-filing system at the Eighth Judicial District Court was undergoing maintenance on the date the notice of appeal was due, and the system was unavailable. We note, however, that appellant's counsel had advance notice that the district court's e-filing system would be undergoing maintenance and would be unavailable starting November 9, 2017, through November 12, 2017. Further, November 9, 2017, was a normal business

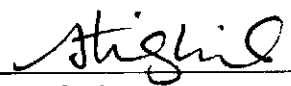
day, and the clerk's office was open to file documents. Appellant offers no explanation for why he elected not to deliver the notice of appeal in person, and instead chose to attempt to e-file. Moreover, EDCR 8.10(c) provides that the protections created in EDCR 8.10(b) do "not apply to the complaint or other filing that initiates an action or proceeding; that is, it does not extend the time within which an action or proceeding must be filed." A notice of appeal initiates the appeal process.

This court is unable to grant discretionary extensions of time to file notices of appeal. See NRAP 26(b)(1)(A) ("the court may not extend the time to file a notice of appeal except as provided in [NRAP] 4(c)"). An untimely notice of appeal fails to vest jurisdiction in this court. *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994). Accordingly, we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Cherry

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

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

cc: Hon. Kathleen E. Delaney, District Judge  
Michael R. Pandullo  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk