

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER DUNCAN A/K/A
CURTIS DUNCAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 75978

FILED

JUL 30 2018

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

ORDER DISMISSING APPEAL

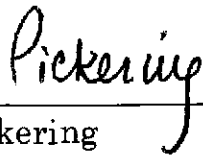
This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.


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 April 12, 2018, and the clerk of the district court served notice of entry of that order on April 19, 2018. Appellant's notice of appeal was due on May 24, 2018.¹ Appellant's notice of appeal, however, was not filed in the district court until May 25, 2018, one day 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).

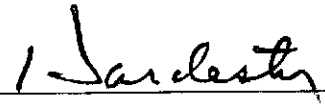
¹See NRS 34.575(1) (providing that an appeal may be filed from an order denying a petition for a writ of habeas corpus within 30 days after service by the district court of written notice of entry of the order); NRAP 26(a) (providing that if the last day of the designated time period falls on a Saturday, 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" when the paper is served by mail).

Because appellant dated his notice of appeal May 20, 2018, which is within the prescribed appeal period, this court entered an order directing the attorney general to obtain and transmit to the clerk of this court a certified copy of the notice of appeal log maintained at the prison indicating the actual date upon which appellant delivered to a prison official his notice of appeal. *See* NRAP 4(d) (a notice of appeal filed by an inmate confined in an institution is deemed timely filed "if it is delivered to a prison official for mailing on or before the last day for filing."). The attorney general has responded and informs this court that neither the notice of appeal log nor the outgoing mail log contain entries from appellant during the relevant time period, and that appellant did not use a brass slip for postage during the period. Because there is no record that appellant timely delivered his notice of appeal to a prison official, the May 25, 2018, date controls. *See id.* (The inmate must use the notice of appeal log or other system designed for legal mail to receive the benefit of the rule). Appellant's notice of appeal was untimely filed, we conclude that we lack jurisdiction, and we

ORDER this appeal DISMISSED.


_____, J.
Pickering


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Douglas Smith, District Judge
Christopher Duncan
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk