

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND CHARLES MERRITT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76805

FILED

NOV 19 2018

EMILY A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING MOTIONS AND DISMISSING APPEAL

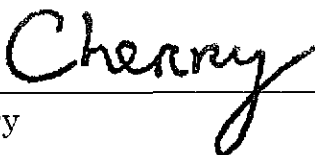
This is a pro se appeal from a judgment of conviction. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

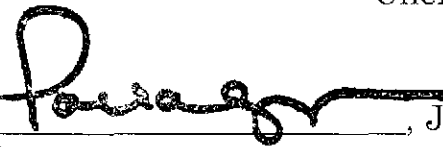
Cause appearing, and despite its untimeliness, the Attorney General's motion for leave to file a motion for an extension of time is granted. NRAP 26(b). We also grant the motion for the extension of time to file a response to this court's order to show cause regarding jurisdiction entered September 19, 2018. The clerk of this court shall file the response received via e-flex on October 24, 2018.


Having considered the attorney general's response, we conclude that we lack jurisdiction over this appeal. The district court entered the judgment of conviction on July 18, 2018; appellant's notice of appeal was therefore due by August 17, 2018. *See* NRAP 4(b), *Edwards v. State*, 112 Nev. 704, 709, 918 P.2d 321, 325 (1996). Appellant's notice of appeal was filed on August 22, 2018, four days late. Because appellant signed his notice of appeal on August 13, 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."); *Kellogg v. Journal Communications*, 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). The attorney general's response informs this court that neither the notice of appeal log nor the outgoing mail log contains any entries from appellant during the relevant time period, also that appellant did not use a brass slip for postage during the period, and there is no indication on appellant's inmate account indicating that he asked for postage. Because there is no record that appellant timely delivered his notice of appeal to a prison official, the August 22, 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.
Cherry


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Hon. Scott N. Freeman, District Judge
Raymond Charles Merritt
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk