

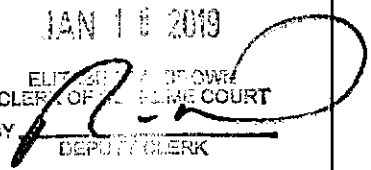
IN THE SUPREME COURT OF THE STATE OF NEVADA

RAFAEL SIERRA-TELENA, A/K/A  
RAFAEL ERNESTO SIERRATELENA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77090

FILED

JAN 16 2019

ELIZABETH A. BROWN  
CLERK OF THE SUPREME COURT  
BY  DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying a motion to modify sentence. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Initial review of this appeal revealed a jurisdictional defect. Specifically, the notice of appeal appeared to be untimely filed. The order denying motion to modify sentence was entered on August 23, 2018. Therefore, appellant's notice of appeal was due to be filed on or before September 24, 2018. See NRAP 4(b)(1)(A); NRAP 26(a)(3); NRCP 6(a); *Edwards v. State*, 112 Nev. 704, 709, 918 P.2d 321, 325 (1996). However, appellant did not file his notice of appeal until September 27, 2018, 3 days beyond the relevant appeal period. Accordingly, this court directed appellant's counsel to show cause why this appeal should not be dismissed for lack of jurisdiction. See *Lozada v. State*, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994) ("[A]n untimely notice of appeal fails to vest jurisdiction in this court").

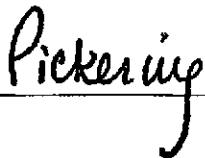
In response to the order to show cause, appellant's counsel argues that the district court considered his motion to modify sentence as a writ of error coram nobis. Counsel argues that because the 30-day time period to file a notice of appeal from the denial of a writ of error coram nobis begins to run from the date of service of written notice of entry of the order,

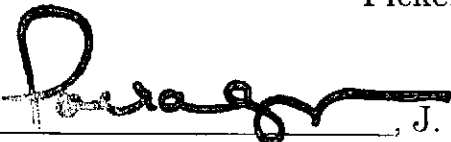
appellant's notice of appeal is timely as written notice of entry of the order was served on September 7, 2018. *See* NRAP 4(a)(1).


The district court's minutes and the order challenged on appeal do not reflect that the district court construed appellant's motion to modify sentence as a writ of error coram nobis. In its minutes from a hearing held on May 11, 2018, the district court states that a writ is inappropriate in this instance, and then the district court proceeds to deny the motion to modify sentence. In the challenged order, drafted by appellant's counsel, there is no mention that the district court considered the motion as a writ of error coram nobis, and the order denies the motion to modify sentence.

Appellant's notice of appeal from the district court's order denying his motion to modify sentence was untimely filed. This court lacks jurisdiction over this appeal. Accordingly, we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Pickering

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

  
\_\_\_\_\_, J.  
Cadish

cc: Hon. William D. Kephart, District Judge  
Alex B. Ghibaud, PC.  
Attorney General/Carson City  
Clark County District Attorney  
Rafael Sierra-Telena  
Eighth District Court Clerk